

United States
Circuit Court of Appeals

For the Ninth Circuit.

J. W. MALONEY, Collector of Internal Revenue,
Portland, Oregon,

Appellant,

vs.

PORTLAND ASSOCIATES, INC., a Corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the District of Oregon.

FILED

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CLERK

No. 9197

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Upon Appeal from the District Court of the United
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THE UNIVERSITY OF CHICAGO

PHILOSOPHY DEPARTMENT

PHILOSOPHY 101: INTRODUCTION TO PHILOSOPHY

Section 001

Professor [Name]

2024

PHILOSOPHY 101

PHILOSOPHY DEPARTMENT

CHICAGO, ILLINOIS

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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CARL C. DONAUGH, United States Attorney; M. B. STRAYER, Assistant United States Attorney; J. MASON DILLARD, Assistant United States Attorney; U. S. Court House, Portland, Oregon, and THOMAS R. WINTER, Special Attorney, Bureau of Internal Revenue, Federal Office Building, Seattle, Washington, for Appellant.

GRIFFITH, PECK & COKE; CLARENCE D. PHILLIPS, Electric Building, Portland, Oregon, for Appellee.

In the District Court of the United States for the
District of Oregon
July Term, 1937

Be it remembered, That on the 16th day of August, 1937, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows, to wit: [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the District Court of the United States for the
District of Oregon

L 12934

PORTLAND ASSOCIATES, INC., a corporation,
Plaintiff,

vs.

J. W. MALONEY, Collector of Internal Revenue,
Portland, Oregon,

Defendant.

COMPLAINT

Comes now the above plaintiff and for cause of action against the above defendant, complains and alleges as follows, to-wit:

I.

That at all times herein mentioned the above named plaintiff was a corporation organized and existing under and by virtue of the laws of the State of Oregon, having its principal place of business in Portland, Multnomah County, Oregon, and that said corporation was voluntarily dissolved by resolution as of December 24, 1935, and since said date, and at the present time, is engaged in the process of liquidation, the collection of its debts and distribution of assets to its stockholders.

II.

That at all times herein mentioned, the above defendant was and now is the duly appointed, qual-

ified and acting Collector of Internal Revenue for the District of Oregon having his office in the City of Portland, Multnomah County, Oregon. [2]

III.

That on or about October of 1933, the above defendant made and levied an assessment for documentary stamp taxes against the above plaintiff in the sum of \$9,772.29 together with a penalty of 5 per centum in the amount of \$488.61, together with interest thereon in the sum of \$123.42, making a total assessment of \$10,384.32, and thereafter on or about the 11th day of December, 1933, the above defendant gave notice of said assessment to the above plaintiff.

IV.

That on or about November 1933, the above defendant made an assessment against the above plaintiff on account of documentary stamp taxes in the sum of \$205.60 together with a penalty of 5 per centum in the sum of \$10.28, together with interest thereon in the sum of \$2.60, making a total assessment of \$218.48, together with an additional amount of interest in the sum of \$41.29, making a total assessment of \$259.77, and that the said defendant thereafter on or about the 11th day of December, 1933, gave notice of said assessment to the above plaintiff.

V.

That thereafter the above defendant caused notice of tax lien, on account of said assessment, to

be filed in Multnomah County, Oregon, Big Horn County, Wyoming, Park County, Wyoming, and Yellowstone County, Montana, the above plaintiff having properly situated in said counties in Wyoming and Montana.

VI.

That thereafter and on or about the 2nd day of March, 1935, the above plaintiff paid to the above defendant, under protest, the [3] sum of \$2,975.81; that thereafter and on or about November 2, 1935, the above plaintiff paid to the above defendant, under protest, the sum of \$10,474.30, being the balance claimed by the above defendant to be due and owing for documentary stamp taxes, and that thereafter the above defendant caused the liens hereinbefore referred to to be satisfied and discharged of record.

VII.

That thereafter and on or about the 14th day of November, 1935, the above plaintiff filed with the above defendant its claim for refund in the sum of \$7,783.19 together with the sum of \$65.60, plus penalties and interest thereon, making a total including penalties and interest claimed as a refund in the sum of \$10,298.18.

VIII.

That thereafter and on or about the 18th day of February, 1937, the Commissioner of Internal Revenue of the United States authorized a refund

upon said claim for refund in the amount of \$2,950.00 and rejected plaintiff's claim for refund in the sum of \$7,347.28; that thereafter on or about the 2nd day of March, 1937, the above defendant, in accordance with said ruling of the Commissioner upon said claim for refund, paid to the above plaintiff as a refund the sum of \$3,254.91; being the amount of said refund together with penalties and interest upon the amount since date of payment.

IX.

That more than six months have elapsed since the date of the filing of said claim for refund and that the Commissioner of Internal Revenue on or about February 18, 1937, notified the above plaintiff by letter that said claim for refund had been rejected in the amount of \$7,347.28. [4]

X.

That said documentary stamp taxes were erroneously and unlawfully collected by the above defendant from the above plaintiff and that there is now due and owing from the above defendant to the above plaintiff the sum of \$7,347.28, together with interest thereon at the rate of 6 per centum per annum from November 2, 1935.

XI.

That there is attached hereto, and referred to herein by reference for the purposes of this complaint and made a part hereof, a full, true and cor-

rect copy of the schedules which were attached to the claim for refund in the above matter showing an analysis of the issuance of certificates in the above matter, showing the number of shares, the amount of tax assessed and paid upon each item, the correct tax as claimed by the taxpayer, the above plaintiff, to which there has been added a statement showing the amount of refund and the particular items for which refund has been made.

XII.

That the above plaintiff claims that the documentary stamp taxes assessed and collected from the above plaintiff were erroneously and unlawfully collected for the following reasons:

(a) That the tax assessed and collected by the defendant in the sum of Thirty-one Hundred (\$3100.00) Dollars as shown in item 5 on page 2 of said Exhibit attached hereto was a tax which was claimed by the defendant on account of an alleged implied transfer of 155,000 shares from stockholders to the voting trustees who acted as trustees under a Voting Trust Agreement dated May 1, 1931. When the capital stock of the Company was increased by the amount of 155,000 shares, said Voting Trust Agreement was in full force and effect and it was provided by the Directors of said Corporation that [5] the said capital stock should be subject to the terms of said Voting Trust Agreement and should only be issued, sold or disposed of under the terms of said Voting Trust Agree-

ment. There was no transfer from the Beneficial owners to the Voting Trustees and the original issue to the Voting Trustees was taxed under item 4 in said exhibit and the tax thereon paid, and that the additional tax of \$3100.00 was therefore erroneous and unlawful.

(b) The tax of \$50.00 as shown in item 8 of said exhibit was claimed by defendant on account of an alleged transfer from C. R. Griffith to the Treasury of said corporation. Under the terms of such transfer the said C. R. Griffith made a donation of 249,996 shares of stock to the Corporation subject to the Voting Trust Agreement dated as of May 1, 1931, which Voting Trust Agreement was to be executed prior to the time of delivery of said shares of stock and that the said item of tax on 249,996 shares was and is taxes under item 2 in said exhibit.

(c) The item of tax of \$140.00 as claimed by the above defendant under item 12 in said exhibit attached hereto claimed by the defendant to be an account of a transfer of 7,000 shares as of June 20, 1932. No such taxable transfer appears on any of the records of the above plaintiff and no such transfer was made.

(d) That the above defendant claimed a tax of \$120.00 as shown in item 13 in the exhibit attached hereto of which amount the sum of \$60.00 has been refunded and the amount not refunded is claimed by the above defendant to represent a tax upon the transfer of 3,000 shares subsequent to June 21,

1932. The records of the above plaintiff show no such item of transfer and the plaintiff claims that no such transfer was ever made.

(e) That the items of tax shown in items 14 and 15 of the [6] exhibit attached hereto are claimed by the above defendant to represent a tax under the Voting Trust Certificates under the Voting Trust dated May 1, 1931. It is claimed by the above plaintiff that all of the items, except those items upon which the plaintiff admits that a tax is payable, as shown by said exhibit, are taxes claimed upon an original issue of Voting Trust Certificates under the terms of said Voting Trust Agreement of May 1, 1931. That under the statutes of the United States and under the regulations of the Treasury Department, in force at time of issuance of said certificates, an original issue of Voting Trust Certificates is not taxable and that said certificates have already been taxed in the items shown as numbers I, II and IV, and also in item V if said item V is taxable.

Wherefore, Plaintiff prays for judgment against the above defendant in the sum of \$7,347.28 together with interest thereon at the rate of 6 per centum per annum from November 2, 1935, together with plaintiff's costs and disbursements herein.

GRIFFITH, PECK & COKE,

Attorneys for Plaintiff.

(Signed) CLARENCE D. PHILLIPS.

[7]

TAX UNDER ACCOUNT # "Misc. Oct. 1933. 4017".

| | |
|--|-------------|
| Tax assessed | \$9772.29 |
| Amount paid on Tax March 2, 1935..... | 1989.10 |
| Balance | 7783.19 |
| 5% penalty..... | 488.61 |
| Interest to November 2, 1935..... | 1942.73 |
| TOTAL TAX PAID UNDER PROTEST Novem- ber 2, 1935 | \$10,214.53 |

TAX UNDER ACCOUNT "Misc. Nov. 1935"

| | |
|---|-------------|
| Amount Assessed | \$ 205.60 |
| Penalty of 5%..... | 10.28 |
| Interest from December 21, 1933 to January 29, 1934..... | 2.60 |
| TOTAL | 218.48 |
| Additional interest to Nov. 2, 1935..... | 41.29 |
| TOTAL TAX | \$ 259.77 |
| GRAND TOTAL | \$10,474.30 |

EXHIBIT "A"

ANALYSIS OF TAX CLAIMED TO BE DUE

| | No. Shares | Tax Assessed and paid | Correct Tax as Claimed by Taxpayer | Refund Allowed and Paid |
|--|------------|--------------------------|--|-------------------------------|
| 1. Stock Certificates Nos. 1 to 5 | 350,000 | \$ 175.20 | \$ 175.20 | \$ |
| 2. Transfers to Trustees Cert. Nos. 5 to 8 Inc. | 349,995 | 70.00 | 70.00 | |
| 3. Certificates 9 & 10 Trans. from Trustees to Directors | 2 | .04 | .04 | |
| 4. Increase in capital, Original issue | 155,000 | 77.50 | 77.50 | |
| 5. Issues to Trustees | 155,000 | 3100.00 | ..... |  |
| 6. Transfer, C. R. Griffith to M. R. Swift | 15,000 | 3.00 | 3.00 | |
| 7. Trans., C. R. Griffith to Casing Head Gas & Oil Co. | 60,000 | 12.00 | 12.00 | |
| 8. Trans., C. R. Griffith to Treasury | 249,996 | 50.00 | ..... |  |
| 9. Trans., Casing Head Gas & Oil Co. to E. M. Steele | 5,000 | 100.00 | 100.00 | |
| 10. E. M. Steele to Title & Trust Co., et al., Trans. | 2,500 | 50.00 | ..... | 50.00 |
| 11. Right to receive by Stock- holders of Big Horn Oil & Refining Co. | 37,000 | 740.00 | ..... | 740.00 |
| 12. Transfer as of June 20, 1932, | 7,000 | 140.00 | .... |  |
| 13. Transfers subsequent to June 21, 1932 | 3,000 | 120.00 | ..... | 60.00 |
| 14. Trust Certificates, 1 to 150 Inc., \$1.00 par Certi- ficates 151 to 390, Inc., no par (See Schedules at- tached) | | 5134.55 | 1275.64 | 1450.00 |
| | | 9772.29 | 1713.38 | |
| 15. Trust Cert. No. 404 to 417 Inc. (See Schedules at- tached hereto) | | 205.60 | 140.00 | |
| | | \$9977.89 | \$1853.38 | \$2300.00 |

EXPLANATION OF ITEMS

1. Tax correct.

2. Tax correct.

3. Tax correct.

4. Tax correct.

5. We understand that this tax item of \$3100.00 is based upon an implied transfer from stockholders to the trustees under the voting trust. In this case there was no transfer from the owners of stock to the trustees of the 155,000 shares. At the time the capital stock of the corporation was changed to no par stock and the number of shares increased, it was provided by the resolutions of increase in the capital stock which were adopted by the stockholders and by the directors at meetings held on September 22, 1931, that each and every share of the increase of capital stock issued, sold or disposed of shall be under and subject to all of the terms and conditions of the voting trust agreement dated May 1, 1931, and that only voting trust certificates should be issued to the beneficial owners. In other words, the restrictions placed by the stockholders and directors of the corporation made it possible only to sell the 155,000 shares to the voting trustees for the benefit of this beneficial owners. In this situation there would be no transfer from the beneficial owners to the trustees, but the issue was direct to the trustees as fiduciaries for the beneficial owners. The original issue of this number of shares as issued to the trustees is taxed under item No. 4 above.

6. Tax correct.

7. Tax correct.

8. Transfer of 249,996 shares was not made by C. R. Griffith to the treasury, but under the terms of that transfer, which was in connection with the conditional subscription of C. R. Griffith, it was provided that the donation by C. R. Griffith of the 249,996 shares should be donated to the corporation, subject, however, to a voting trust agreement to be executed prior to the time of the delivery of the stock. The voting trust agreement was executed and the 249,996 shares are included and taxed in item No. 2 above.

9. Tax correct.

10. The records of the Portland Associates do not disclose any transfer from E. M. Steele to Title and Trust Company, et al. Our conversations [10] with the representative of the Collector of Internal Revenue indicate that items 9 and 10 were included to make up part of the difference between 60,000 shares authorized to be issued to Casing Head Gas & Oil Company and the 50,000 shares actually issued to Casing Head Gas & Oil Company, 50,000 shares were actually issued to Casing Head Gas & Oil Company and taxed under item No. 14. An additional 5000 shares were issued and taxed as item No. 9. The remaining 5000 shares have never been issued.

11. In this transaction the Big Horn Oil & Refining Company, a corporation, did not sell the

assets of the corporation to Portland Associates, Inc. Portland Associates, Inc. purchased the stock of Big Horn Oil & Refining Company from the Stockholders. If there were any transfers or rights to receive among any stockholders of Big Horn Oil & Refining Company, such tax would not be assessable against Portland Associates, Inc.

12. This item was not definitely designated in the report of the examining officer, and we find no taxable transfer on the records of Portland Associates, Inc.

13. This item was not definitely designated in the report of the examining officer and we find no taxable transfer on the records of Portland Associates, Inc. (See schedules attached).

14. The reduction in the tax on this item is chiefly due to the reason that the original issue of voting trust certificates was taxed. An original issue of voting trust certificates is not taxable (See Article 29 of Regulations 71). (See schedules attached.) [11]

ANALYSIS OF VOTING TRUST CERTIFICATES
TAXED UNDER ITEM 14.

| Trust Cert. Nos. | To Whom Issued: | Description of Issue | Number Shares | Tax Assessed | Correct Tax as claimed by Taxpayer |
|---------------------|----------------------|-------------------------|------------------|-----------------|--|
| 1. | Otis B. Wright | Original Issue | 1500 | \$.30 | ..... |
| 2. | E. E. Cohen | " " | 3000 | .60 | ..... |
| 3. | E. W. Battleson | " " | 250 | .06 | ..... |
| 4. | E. W. Battleson | " " | 250 | .06 | ..... |
| 5. | E. W. Battleson | " " | 250 | .06 | ..... |
| 6. | E. W. Battleson | " " | 250 | .06 | ..... |
| 7. | E. W. Battleson | " " | 500 | .10 | ..... |
| 8. | E. W. Battleson | " " | 500 | .10 | ..... |
| 9. | E. W. Battleson | " " | 500 | .10 | ..... |
| 10. | E. W. Battleson | " " | 500 | .10 | ..... |
| 11. | E. W. Battleson | " " | 500 | .10 | ..... |
| 12. | E. W. Battleson | " " | 500 | .10 | ..... |
| 13. | E. W. Battleson | " " | 500 | .10 | ..... |
| 14. | E. W. Battleson | " " | 500 | .10 | ..... |
| 15. | E. W. Battleson | " " | 500 | .10 | ..... |
| 16. | E. W. Battleson | " " | 500 | .10 | ..... |
| 17. | E. W. Battleson | " " | 500 | .10 | ..... |
| 18. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 19. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 20. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 21. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 22. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 23. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 24. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 25. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 26. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 27. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 28. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 29. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 30. | E. W. Battleson | " " | 1000 | .20 | ..... |
| 31. | C. R. Griffith | " " | 16125 | .04 | ..... |
| 32. | Franklin T. Griffith | " " | 7500 | 1.50 | ..... |
| 33. | John H. Lothrop | " " | 4000 | .80 | ..... |
| 34. | W. A. Lothrop | " " | 350 | .08 | ..... |
| 35. | L. Underdahl | " " | 5000 | 1.00 | ..... |
| 36. | Robert S. Brandon | " " | 2800 | .56 | ..... |

| Trust Cert. Nos. | To Whom Issued | Description of Issue | Number Shares | Tax Assessed | Correct Tax As claimed by Taxpayer |
|------------------|----------------------|----------------------|---------------|--------------|------------------------------------|
| 37. | Kerr Investment Co. | Original Issue | 5000 | 1.00 | ..... |
| 38. | Franklin T. Griffith | “ “ | 6000 | 1.20 | ..... |
| 39. | C. R. Griffith | “ “ | 3000 | ..... | ..... |
| 40. | Wm. Cavanaugh | Cancelled | 500 | ..... | ..... |
| 41. | Erma Lucille Bither | Original Issue | 500 | .10 | ..... |
| 42. | C. E. Dant | “ “ | 2000 | .40 | ..... |
| 43. | M. F. Swift | “ “ | 5000 | ..... | ..... |
| 44. | M. F. Swift | “ “ | 5000 | ..... | ..... |
| 45. | M. F. Swift | “ “ | 5000 | ..... | ..... |
| | | | | | [12] |
| 46. | Otis B. Wight | Original Issue | 3000 | .60 | ..... |
| 47. | Otis B. Wight | “ “ | 3000 | .60 | ..... |
| 48. | L. Underdahl | “ “ | 3000 | .60 | ..... |
| 49. | L. Underdahl | “ “ | 3000 | .60 | ..... |
| 50. | Franklin T. Griffith | “ “ | 5000 | 1.00 | ..... |
| 51. | Franklin T. Griffith | “ “ | 5000 | 1.00 | ..... |
| 52. | Franklin T. Griffith | “ “ | 5000 | 1.00 | ..... |
| 53. | C. R. Griffith | “ “ | 3000 | ..... | ..... |
| 54. | H. F. Waechter | “ “ | 10000 | 2.00 | ..... |
| 55. | H. F. Waechter | “ “ | 10000 | 2.00 | ..... |
| 56. | H. F. Waechter | “ “ | 10000 | 2.00 | ..... |
| 57. | J. H. Lothrop | “ “ | 1000 | .20 | ..... |
| 58. | O. B. Coldwell | “ “ | 3000 | .60 | ..... |
| 59. | Franklin T. Griffith | “ “ | 6000 | 1.20 | ..... |
| 60. | Jack Barde | “ “ | 7500 | 1.50 | ..... |
| 61. | Jack Barde | “ “ | 5000 | 1.00 | ..... |
| 62. | W. R. Evans | “ “ | 1000 | .20 | ..... |
| 63. | A. M. Work | “ “ | 2000 | .40 | ..... |
| 64. | E. H. Bollinger | “ “ | 1000 | .20 | ..... |
| 65. | H. K. Senour | “ “ | 1000 | .20 | ..... |
| 66. | Kerr Investment Co. | “ “ | 5000 | 1.00 | ..... |
| 67. | C. R. Griffith | “ “ | 3000 | ..... | ..... |
| 68. | Geo. W. Baldwin | “ “ | 1000 | .20 | ..... |
| 69. | Clarence D. Phillips | “ “ | 500 | .10 | ..... |
| 70. | E. I. Snyder | “ “ | 250 | .05 | ..... |
| 71. | O. C. Coldwell | “ “ | 300 | .06 | ..... |
| 72. | A. J. Johnstone | “ “ | 1000 | .20 | ..... |
| 73. | G. O. Durkee | “ “ | 1000 | .20 | ..... |
| 74. | Walter Brenton | “ “ | 500 | .10 | ..... |
| 75. | W. H. Lines | “ “ | 1000 | .20 | ..... |

| Trust Cert. Nos. | To Whom Issued: | Description of Issue | Number Shares | Tax Assessed | Correct Tax as claimed by Taxpayer |
|---------------------|------------------------------|-------------------------|------------------|-----------------|--|
| 76. | Fred Cooper | Original Issue | 1000 | .20 | ..... |
| 77. | G. C. Fields | “ “ | 1000 | .20 | ..... |
| 78. | W. S. Babson | “ “ | 1000 | .20 | ..... |
| 79. | R. M. Townsend | “ “ | 500 | .10 | ..... |
| 80. | R. E. Brennan | “ “ | 500 | .10 | ..... |
| 81. | W. J. Morris | “ “ | 500 | .10 | ..... |
| 82. | Claire H. Lines | “ “ | 1000 | .20 | ..... |
| 83. | E. G. Jarvis | “ “ | 1000 | .20 | ..... |
| 84. | John S. Coke | “ “ | 1000 | .20 | ..... |
| 85. | Earl S. Nelson | “ “ | 1000 | .20 | ..... |
| 86. | O. S. Krogstad | “ “ | 500 | .10 | ..... |
| 87. | G. P. Lumsdon & wife | “ “ | 200 | .04 | ..... |
| 88. | Carlton B. Short | “ “ | 500 | .10 | ..... |
| 89. | B. F. Boynton | “ “ | 500 | .10 | ..... |
| 90. | A. J. Bussey | “ “ | 200 | .04 | ..... |
| 91. | Cora O. Kelley | “ “ | 1000 | .20 | ..... |
| 92. | Joseph A. Boyce | “ “ | 200 | .04 | ..... |
| 93. | P. J. Maher | “ “ | 500 | .10 | ..... |
| [13] | | | | | |
| 94. | George Sullivan | Original Issue | 400 | .08 | ..... |
| 95. | R. R. Robley | “ “ | 200 | .04 | ..... |
| 96. | Lawrence Launidson | Void | 200 | ..... | ..... |
| 97. | Thomas Pumfrey | Original Issue | 1000 | .20 | ..... |
| 98. | C. P. Osborne | “ “ | 400 | .08 | ..... |
| 99. | Jean M. Osborne | “ “ | 400 | .08 | ..... |
| 100. | Ruth A. Osborne | “ “ | 400 | .08 | ..... |
| 101. | Franklin T. Griffith | “ “ | 10225 | 2.06 | ..... |
| 102. | W. R. Evans | “ “ | 1000 | .20 | ..... |
| 103. | R. W. Shepherd | “ “ | 250 | .06 | ..... |
| 104. | Frederick L. Swanson | “ “ | 100 | .02 | ..... |
| 105. | David Alvis Wright | “ “ | 200 | .04 | ..... |
| 106. | Joseph Alexander Brownson | “ “ | 400 | .08 | ..... |
| 107. | Wm. Munroe Hamilton | “ “ | 1200 | .24 | ..... |
| 108. | Wm. Andrew Merriorr | “ “ | 100 | .02 | ..... |
| 109. | Franklin T. Griffith | “ “ | 1125 | .24 | ..... |
| 110. | G. Spencer Harrisdale | “ “ | 2000 | .40 | ..... |
| 111. | Jean M. Osborne | “ “ | 400 | .08 | ..... |
| 112. | C. P. Osborne | “ “ | 400 | .08 | ..... |
| 113. | Lawrence Lawridsen | “ “ | 200 | .04 | ..... |

| Trust Cert. Nos. | To Whom Issued | Description of Issue | Number Shares | Tax Assessed | Correct Tax as claimed by Taxpayer |
|---------------------|------------------------------|-------------------------|------------------|-----------------|--|
| 114. | O. B. Coldwell | Original Issue | 1000 | .20 | ..... |
| 115. | Christobel R. Leiter | “ “ | 2000 | .40 | ..... |
| 116. | J. D. Perry, et al | “ “ | 500 | .10 | ..... |
| 117. | Etta P. Griffith | “ “ | 1750 | .36 | ..... |
| 118. | Franklin T. Griffith | “ “ | 15750 | 3.16 | ..... |
| 119. | Chas. Lebold | Transfer | 500 | .10 | \$.10 |
| 120. | A. J. Peaper | Transfer | 1000 | .20 | .20 |
| 121. | H. K. Senour | Transfer | 1000 | .20 | .20 |
| 122. | Frank Krennin | Transfer | 220 | .06 | .06 |
| 123. | M. F. Swift | No Transfer | 2280 | ..... | ..... |
| 124. | H. K. Senour | Transfer | 500 | .10 | .10 |
| 125. | Andrew Kerr | Transfer | 1500 | .30 | .30 |
| 126. | Kerr Investment Co. | Transfer | 3000 | .60 | .60 |
| 127. | Kerr Investment Co. | Original Issue | 2500 | .50 | ..... |
| 128. | Barde Steel Co. | Void | 2500 | ..... | ..... |
| 129. | Jack Barde | Original Issue | 2500 | .50 | ..... |
| 130. | Nina Grenthorne | Transfer | 500 | .10 | .10 |
| 131. | M. F. Swift | No Transfer | 1780 | ..... | ..... |
| 132. | Casing Head Gas & Oil Co. | Original Issue | 50000 | ..... | ..... |
| 133. | Henry S. Mears | Transfer | 5251 | 1.06 | 1.06 |
| 134. | E. M. Steel | Transfer | 15947 | 3.20 | 3.18 |
| 135. | Bernice Baldwin | Transfer | 100 | .02 | .02 |
| 136. | Robert F. Brandon | No Transfer | 2700 | ..... | ..... |
| 137. | H. K. Senour | Transfer | 1000 | .20 | .20 |
| 138. | H. K. Senour | Transfer | 1000 | .20 | .20 |
| 139. | H. K. Senour | Transfer | 1000 | .20 | .20 |
| [14] | | | | | |
| 140. | H. K. Senour | Transfer | 1500 | .30 | .30 |
| 141. | Andrew Kerr | Transfer | 1500 | .30 | .30 |
| 142. | E. M. Steel | No Transfer | 9947 | ..... | ..... |
| 143. | C. H. Griffith | Transfer | 610 | .14 | .14 |
| 144. | E. M. Steel | No Transfer | 9337 | ..... | ..... |
| 145. | A. E. Rosen | Transfer | 200 | .04 | .04 |
| 146. | R. C. Rosen | Transfer | 200 | .04 | .04 |
| 147. | C. H. Griffith | No Transfer | 210 | ..... | ..... |
| 148. | Andrew Kerr | Transfer | 2500 | .50 | .50 |
| 149. | E. M. Steel | No Transfer | 6837 | ..... | ..... |
| 150. | —Void— | Specimen | ..... | ..... | ..... |
| 151. | F. S. Elfring | Transfer | 1000 | 20.00 | 20.00 |

| Trust Cert. Nos. | To Whom Issued | Description of Issue | Number Shares | Tax Assessed | Correct Tax as claimed by Taxpayer |
|---------------------|----------------------|-------------------------|------------------|-----------------|--|
| 152. | Regner W. Kuelberg | Transfer | 100 | 2.00 | 2.00 |
| 153. | Engel Engelson | " | 250 | 5.00 | 5.00 |
| 154. | Kay H. Olesen | " | 500 | 10.00 | 10.00 |
| 155. | E. M. Steel | No Transfer | 250 | ..... | ..... |
| 156. | E. M. Steel | No Transfer | 4737 | ..... | ..... |
| 157. | E. M. Steel | Original Issue | 5753 | 115.08 | ..... |
| 158. | Kerr Investment Co. | " " | 10000 | 200.00 | ..... |
| 159. | J. C. Ainsworth | Transfer | 88 | 1.76 | 1.76 |
| 160. | Vidor Andrew | " | 263 | 5.26 | 5.26 |
| 161. | E. M. Steel | " | 875 | 17.50 | 17.50 |
| 162. | E. W. Battleson | " | 4375 | 87.50 | 87.50 |
| 163. | David Boisseau | " | 350 | 7.00 | 7.00 |
| 164. | D. W. Borg | " | 2538 | 50.76 | 50.76 |
| 165. | John Borg | " | 263 | 5.26 | 5.26 |
| 166. | Robert B. Brandon | " | 2634 | 52.68 | 52.68 |
| 167. | Wm. Cavanaugh | " | 35 | .70 | .70 |
| 168. | Blaine B. Coles | " | 1489 | 29.78 | 29.78 |
| 169. | Arthur Cook | " | 325 | 6.50 | 6.50 |
| 170. | H. H. Hughes | " | 200 | 4.00 | 4.00 |
| 171. | Walter M. Cook | " | 1314 | 26.28 | 26.28 |
| 172. | Bert H. Custer | " | 175 | 3.50 | 3.50 |
| 173. | R. M. Dooly | " | 263 | 5.26 | 5.26 |
| 174. | F. S. Elfning | " | 132 | 2.64 | 2.64 |
| 175. | G. & Mildred Francis | " | 70 | 1.40 | 1.40 |
| 176. | Charles R. Griffith | " | 2450 | 49.00 | 49.00 |
| 177. | John Hagan | " | 263 | 5.26 | 5.26 |
| 178. | V. L. Hamlin | " | 438 | 8.76 | 8.76 |
| 179. | Wm. Hanson | " | 132 | 2.62 | 2.62 |
| 180. | J. H. Harris | " | 35 | .70 | .70 |
| 181. | C. M. Harrison | " | 175 | 3.50 | 3.50 |
| 182. | Calvin Heilig | " | 875 | 17.50 | 17.50 |
| 183. | Victor Hermonson | " | 263 | 5.26 | 5.26 |
| 184. | R. D. Hoyt | " | 263 | 5.26 | 5.26 |
| [15] | | | | | |
| 185. | Herman Isaacson | Transfer | 525 | 10.50 | 10.50 |
| 186. | G. Orlo Jefferson | " | 875 | 17.50 | 17.50 |
| 187. | C. R. Johnson | " | 525 | 10.50 | 10.50 |
| 188. | Regner W. Kuelberg | " | 53 | 1.06 | 1.06 |
| 189. | R. W. McLennen | " | 53 | 1.06 | 1.06 |
| 190. | Ludwig F. Meyer | " | 438 | 8.76 | 8.76 |

| Trust Cert. Nos. | To Whom Issued: | Description of Issue | Number Shares | Tax Assessed | Correct Tax as claimed by Taxpayer |
|---------------------|------------------------|-------------------------|------------------|-----------------|--|
| 191. | J. A. Nelson | " | 630 | 12.60 | 12.60 |
| 192. | Charles E. Oliver | " | 175 | 3.50 | 3.50 |
| 193. | A. Parker | " | 263 | 5.26 | 5.26 |
| 194. | James Williams | " | 35 | .70 | .70 |
| 195. | Adam T. Smith | " | 158 | 3.16 | 3.16 |
| 196. | John T. Strom | " | 525 | 10.50 | 10.50 |
| 197. | Theodore Thye | " | 438 | 8.76 | 8.76 |
| 198. | Geo. Trofton | " | 10 | .20 | .20 |
| 199. | Alfred Wicke | " | 3378 | 67.56 | 67.56 |
| 200. | Otis B. Wight | " | 350 | 3.00 | 3.00 |
| 201. | Mary F. Winter | " | 88 | 1.76 | 1.76 |
| 202. | E. W. Battleson | " | 1050 | 21.00 | 21.00 |
| 203. | E. M. Steel | No Transfer | 3687 | ..... | ..... |
| 204. | Wm. Gillis | Original Issue | 1500 | 30.00 | ..... |
| 205. | Ralph Wiesprecht | " " | 1500 | 30.00 | ..... |
| 206. | Urfan Keppinger | " " | 1500 | 30.00 | ..... |
| 207. | Minnie Oliver | " " | 1400 | 28.00 | ..... |
| 208. | Katherine Piggott | " " | 325 | 6.50 | ..... |
| 209. | M. F. Swift | No Transfer | 1380 | ..... | ..... |
| 210. | Arthur Cook | Transfer | 300 | 6.00 | 6.00 |
| 211. | Blaine B. Coles | " | 100 | 2.00 | 2.00 |
| 212. | Arthur Cook | " | 500 | 10.00 | 10.00 |
| 213. | E. M. Steell | No Transfer | 3187 | ..... | ..... |
| 214. | Frank Keenan | Transfer | 250 | 5.00 | 5.00 |
| 215. | E. M. Steell | No Transfer | 2937 | ..... | ..... |
| 216. | Frank Keeman | Transfer | 250 | 5.00 | 5.00 |
| 217. | Charles E. Lebold | " | 825 | 16.50 | 16.50 |
| 218. | E. M. Steell | No Transfer | 1862 | ..... | ..... |
| 219. | E. T. Grimes | Transfer | 500 | 10.00 | 10.00 |
| 220. | Jean E. Grimes | " | 300 | 6.00 | 6.00 |
| 221. | Robert B. Brandon | No Transfer | 1900 | ..... | ..... |
| 222. | S. M. Mears | Original Issue | 945 | 18.90 | ..... |
| 223. | Georgiana McGrath | " " | 200 | 4.00 | ..... |
| 224. | Verda L. Moore | Transfer | 25 | .50 | .50 |
| 225. | E. M. Steell | No Transfer | 1837 | ..... | ..... |
| 226. | Geo. Ateyeh | Transfer | 500 | 10.00 | 10.00 |
| 227. | W. E. Stewart | " | 500 | 10.00 | 10.00 |
| 228. | E. M. Steell | No Transfer | 837 | 16.74 | ..... |
| 229. | Prescott V. Cookingham | Transfer | 50 | 1.00 | 1.00 |

| Trust Cert. Nos. | To Whom Issued | Description of Issue | Number Shares | Tax Assessed | Correct Tax As claimed by Taxpayer |
|---------------------|---------------------------|-------------------------|------------------|-----------------|--|
| 230. | A. J. Peaper | Transfer | 200 | 4.00 | 4.00 |
| 231. | E. M. Steell | " | 900 | 18.00 | 18.00 |
| 232. | C. C. Clarkson | " | 1000 | 20.00 | 20.00 |
| 233. | I. D. Murfield | Original Issue | 100 | 2.00 | ..... |
| [16] | | | | | |
| 234. | H. C. Barber | " " | 100 | 2.00 | ..... |
| 235. | H. B. Davis | " " | 250 | 5.00 | ..... |
| 236. | N. A. Leach | " " | 500 | 10.00 | ..... |
| 237. | Frank Kiemann | Transfer | 280 | 5.60 | 5.60 |
| 238. | Chas. E. Lebond | " | 175 | 3.50 | 3.50 |
| 239. | M. F. Swift | No Transfer | 925 | ..... | ..... |
| 240. | Thelma Cacy | Transfer | 20 | .40 | .40 |
| 241. | Robt. A. Wood | " | 50 | 1.00 | 1.00 |
| 242. | Chas. M. Newman, et al | " | 75 | 1.50 | 1.50 |
| 243. | C. H. Griffith | No Transfer | 65 | ..... | ..... |
| 244. | E. W. Battleson | Original Issue | 10000 | 200.00 | ..... |
| 245. | Franklin T. Griffith | " " | 800 | 16.00 | ..... |
| 246. | E. W. Battleson | " " | 2500 | 50.00 | ..... |
| 247. | Franklin T. Griffith | " " | 2500 | 50.00 | ..... |
| 248. | H. T. Shelley | Transfer | 333 | 6.66 | 6.66 |
| 249. | E. M. Steele | No Transfer | 567 | ..... | ..... |
| 250. | C. B. Short | Transfer | 100 | 2.00 | 2.00 |
| 251. | C. P. Osborne | " | 100 | 2.00 | 2.00 |
| 252. | Raymond E. Brennan | " | 200 | 4.00 | 4.00 |
| 253. | Geo. O. Durkee | " | 100 | 2.00 | 2.00 |
| 254. | Thomas Pumpfrey | " | 100 | 2.00 | 2.00 |
| 255. | J. M. Gillham | " | 200 | 4.00 | 4.00 |
| 256. | E. M. Steele | No Transfer | 37 | ..... | ..... |
| 257. | E. D. Searing | Transfer | 100 | 2.00 | 2.00 |
| 258. | Ben Rossiter | " | 100 | 2.00 | 2.00 |
| 259. | Arthur Cook | No Transfer | 300 | ..... | ..... |
| 260. | Donald McKay | Transfer | 150 | 3.00 | 3.00 |
| 261. | Geo. P. Laurenden, et ux. | Transfer | 450 | 9.00 | 9.00 |
| 262. | Arthur Dorais, et ux. | " | 150 | 3.00 | 3.00 |
| 263. | Henry S. Mears | No Transfer | 4501 | ..... | ..... |
| 264. | C. C. Clarkson | Transfer | 1000 | 20.00 | 20.00 |
| 265. | Henry S. Mears | " | 750 | 15.00 | 15.00 |
| 266. | Arthur Cook | " | 4003 | 80.06 | 80.06 |
| 267. | R. B. Brandon | " | 1100 | 22.00 | 22.00 |
| 268. | Arthur Cook | No Transfer | 2903 | ..... | ..... |

| Trust Cert. Nos. | To Whom Issued | Description of Issue | Number Shares | Tax Assessed | Correct Tax As claimed by Taxpayer |
|------------------|-----------------------|----------------------|---------------|--------------|------------------------------------|
| 269. | Arthur Dorais, et ux. | Transfer | 50 | 1.00 | 1.00 |
| 270. | C. H. Griffith | No Transfer | 15 | ..... | ..... |
| 271. | C. C. Clarkson | Transfer | 150 | 3.00 | 3.00 |
| 272. | Wm. Ingold | " | 150 | 3.00 | 3.00 |
| 273. | Engel Engelson | " | 100 | 2.00 | 2.00 |
| 274. | Arthur Cook | No Transfer | 2803 | ..... | ..... |
| 275. | Thos. Pumfrey | Transfer | 400 | 8.00 | 8.00 |
| 276. | A. J. Bussey | Original Issue | 100 | 2.00 | ..... |
| 277. | Chas. E. Freeburg | " " | 100 | 2.00 | ..... |
| 278. | W. T. Wilmot | " " | 100 | 2.00 | ..... |
| 279. | Andrew Weinberger | " " | 100 | 2.00 | ..... |
| 280. | Raymond E. Brennan | " " | 100 | 2.00 | ..... |
| 281. | John M. Mason | " " | 100 | 2.00 | ..... |
| 282. | F. C. Coleord | " " | 50 | 1.00 | ..... |

[17]

| Trust Cert. Nos. | To Whom Issued | Description of Issue | Number Shares | Tax Assessed | Correct Tax as claimed by Taxpayer | Refund |
|------------------|--------------------|----------------------|---------------|--------------|------------------------------------|--------|
| 283. | R. J. Moore | Original Issue | 50 | 1.00 | ..... |  |
| 284. | Chas. W. Foote | " " | 200 | 4.00 | ..... |  |
| 285. | Louis Rosenblatt | Transfer | 1000 | 20.00 | 20.00 | |
| 286. | Arthur Cook | No Transfer | 1803 | ..... | 10.00 | |
| 287. | E. W. Stewart | Transfer | 500 | 10.00 | 10.00 | |
| 288. | Arthur Cook | Void | 1503 | ..... | ..... |  |
| 289. | Arthur Cook | No Transfer | 1303 | ..... | ..... |  |
| 290. | Andrew Kerr | Original Issue | 4500 | 90.00 | ..... |  |
| 291. | C. C. Clarkson | Transfer | 400 | 8.00 | 8.00 | |
| 292. | Arthur Cook | No Transfer | 200 | ..... | ..... |  |
| 293. | Arthur Cook | " " | 703 | ..... | ..... |  |
| 294. | Jeff Ringle | Original Issue | 1000 | 20.00 | ..... | 20.00 |
| 295. | Jeff. Ringle | " " | 1000 | 20.00 | ..... | 20.00 |
| 296. | E. J. Fleming | " " | 2500 | 50.00 | ..... | 50.00 |
| 297. | E. J. Fleming | " " | 2500 | 50.00 | ..... | 50.00 |
| 298. | E. J. Fleming | " " | 2500 | 50.00 | ..... | 50.00 |
| 299. | E. J. Fleming | " " | 2500 | 50.00 | ..... | 50.00 |
| 300. | Mrs. E. E. Fleming | " " | 1000 | 20.00 | ..... | 20.00 |
| 301. | Mrs. E. E. Fleming | " " | 1000 | 20.00 | ..... | 20.00 |
| 302. | T. R. Graham | " " | 500 | 10.00 | ..... | 10.00 |
| 303. | T. R. Graham | " " | 500 | 10.00 | ..... | 10.00 |
| 304. | J. E. Simon | " " | 500 | 10.00 | ..... | 10.00 |

| Trust Cert. Nos. | To Whom Issued | Description of Issue | Number Shares | Tax Assessed | Correct Tax as claimed by Taxpayer | Refund |
|---------------------|-------------------|-------------------------|------------------|-----------------|--|--------|
| 305. | R. J. O'Malley | Original Issue | 1000 | 20.00 | ..... | 20.00 |
| 306. | R. J. O'Malley | " " | 1000 | 20.00 | ..... | 20.00 |
| 307. | J. G. Everett | " " | 5000 | 100.00 | ..... | 100.00 |
| 308. | J. G. Everett | " " | 5000 | 100.00 | ..... | 100.00 |
| 309. | J. G. Everett | " " | 5000 | 100.00 | ..... | 100.00 |
| 310. | J. G. Everett | " " | 1000 | 20.00 | ..... | 20.00 |
| 311. | J. G. Everett | " " | 1000 | 20.00 | ..... | 20.00 |
| 312. | J. G. Everett | " " | 1000 | 20.00 | ..... | 20.00 |
| 313. | J. G. Everett | " " | 1000 | 20.00 | ..... | 20.00 |
| 314. | G. H. Downs | " " | 1000 | 20.00 | ..... | 20.00 |
| 315. | Paul Stock | " " | 10000 | 200.00 | ..... | ..... |
| 316. | Paul Stock | " " | 10000 | 200.00 | ..... | ..... |
| 317. | Paul Stock | " " | 10000 | 200.00 | ..... | ..... |
| 318. | Paul Stock | " " | 10000 | 200.00 | ..... | ..... |
| 319. | Paul Stock | " " | 10000 | 200.00 | ..... | ..... |
| 320. | Paul Stock | " " | 1000 | 20.00 | ..... | ..... |
| 321. | Paul Stock | " " | 1000 | 20.00 | ..... | ..... |
| 322. | Paul Stock | " " | 1000 | 20.00 | ..... | ..... |
| 323. | Paul Stock | " " | 1000 | 20.00 | ..... | ..... |
| 324. | Paul Stock | " " | 1000 | 20.00 | ..... | ..... |
| 325. | Paul Stock | " " | 1000 | 20.00 | ..... | ..... |
| 326. | Paul Stock | " " | 1000 | 20.00 | ..... | ..... |
| 327. | Paul Stock | " " | 500 | 10.00 | ..... | ..... |
| 328. | Paul Stock | " " | 5000 | 100.00 | ..... | 100.00 |
| 329. | Paul Stock | " " | 5000 | 100.00 | ..... | 100.00 |
| 330. | Paul Stock | " " | 5000 | 100.00 | ..... | 100.00 |
| 331. | Paul Stock | " " | 5000 | 100.00 | ..... | 100.00 |
| [18] | | | | | | |
| 332. | Paul Stock | Original Issue | 5000 | 100.00 | ..... | 100.00 |
| 333. | Paul Stock | " " | 5000 | 100.00 | ..... | 100.00 |
| 334. | Paul Stock | " " | 5000 | 100.00 | ..... | 100.00 |
| 335. | Calvin Heilig | Transfer | 500 | 10.00 | 10.00 | ..... |
| 336. | R. B. Brandon | No Transfer | 600 | ..... | ..... | ..... |
| 337. | Erma L. Bither | Transfer | 665 | 13.30 | 13.30 | ..... |
| 338. | Arthur Cook | No Transfer | 38 | ..... | ..... | ..... |
| 339. | Calvin Heilig | Original Issue | 135 | 2.50 | ..... | ..... |
| 340. | V. L. Hamlin | " " | 311 | 6.22 | ..... | ..... |
| 341. | Ted Thye | " " | 312 | 6.24 | ..... | ..... |
| 342. | J. H. Lothrop | " " | 500 | 10.00 | ..... | ..... |
| 343. | C. C. Clarkson | Transfer | 400 | 8.00 | 8.00 | ..... |

| Trust Cert. Nos. | To Whom Issued | Description of Issue | Number Shares | Tax Assessed | Correct Tax as claimed by Taxpayer | Refund |
|---------------------|-------------------|-------------------------|------------------|-----------------|--|--------|
| 344. | Arthur Cook | Transfer | 475 | 9.50 | 9.50 | ..... |
| 345. | Lucile DeWitte | Transfer | 563 | 11.26 | 11.26 | ..... |
| 346. | Erma L. Bither | Transfer | 135 | 2.70 | 2.70 | ..... |
| 347. | Glen Francis Co. | Void | 1802 | ..... | ..... | ..... |
| 348. | Louis E. Meyer | Transfer | 350 | 7.00 | 7.00 | ..... |
| 349. | R. B. Brandon | No Transfer | 256 | ..... | ..... | ..... |
| 350. | Glen Francis Co. | (Transfer) Void | 1802 | ..... | ..... | ..... |
| 351. | Louise C. Fleming | Transfer | 1000 | 20.00 | 20.00 | ..... |
| 352. | E. J. Fleming | Transfer | 2500 | 50.00 | 50.00 | ..... |
| 353. | F. C. Coleord | Transfer | 50 | 1.00 | 1.00 | ..... |
| 354. | M. F. Swift | Void | 875 | ..... | ..... | ..... |
| 355. | Earl H. Mody | Transfer | 233 | 4.68 | 4.66 | ..... |
| 356. | I. D. Murfield | Transfer | 150 | 3.00 | 3.00 | ..... |
| 357. | Frank Coffenberry | Transfer | 250 | 5.00 | 5.00 | ..... |
| 358. | R. J. Moore | Transfer | 50 | 1.00 | 1.00 | ..... |
| 359. | N. A. Leach | Original Issue | 500 | 10.00 | ..... | ..... |
| 360. | O. P. Taylor | " " | 700 | 14.00 | ..... | ..... |
| 361. | C. R. Griffith | " " | 8775 | 175.00 | ..... | ..... |
| 362. | Robin Reed | Transfer | 300 | 6.00 | 6.00 | ..... |
| 363. | M. F. Swift | Transfer | 267 | 5.34 | 5.34 | ..... |
| 364. | Agnes Kieman | Transfer | 780 | 15.60 | 15.60 | ..... |
| 365. | John W. Moore | Transfer | 100 | 2.00 | 2.00 | ..... |
| 366. | M. F. Swift | Void-error | 359 | ..... | ..... | ..... |
| 367. | M. F. Swift | No Transfer | 25 | ..... | ..... | ..... |
| 368. | Julia F. Brock | Transfer | 100 | 2.00 | 2.00 | ..... |
| 369. | Arthur Cook | No Transfer | 225 | ..... | ..... | ..... |
| 370. | Walter Dickey | Void-error | 750 | ..... | ..... | ..... |
| 371. | Laura Griffith | Transfer | 500 | 10.00 | 10.00 | ..... |
| 372. | Robert B. Brandon | No Transfer | 1384 | ..... | ..... | ..... |
| 373. | C. C. Clarkson | Transfer | 750 | 15.00 | 15.00 | ..... |
| 374. | E. M. Steell | Original Issue | 5000 | 100.00 | ..... | ..... |
| 375. | W. E. Stewart | Transfer | 500 | 10.00 | 10.00 | ..... |
| 376. | Vivian Cooley | Transfer | 52 | 1.04 | 1.04 | ..... |
| 377. | John T. McGregor | Transfer | 131 | 2.62 | 2.62 | ..... |
| 378. | R. B. Brandon | No Transfer | 67 | ..... | ..... | ..... |
| 379. | Blaine B. Coles | No Transfer | 675 | ..... | ..... | ..... |
| 380. | Blaine B. Coles | No Transfer | 814 | ..... | ..... | ..... |

| Trust Cert. Nos. | To Whom Issued | Description of Issue | Number Shares | Tax Assessed | Correct Tax as claimed by Taxpayer |
|---------------------|-------------------|-------------------------|------------------|-----------------|--|
| 381. | Erma L. Bither | Transfer | 665 | 13.30 | 13.30 |
| 382. | Robert S. Brandon | No Transfer | 719 | ..... | ..... |
| 383. | Paul Stock | No Transfer | 2500 | ..... | ..... |
| 384. | Paul Stock | No Transfer | 1000 | ..... | ..... |
| 385. | Jack Barde | No Transfer | 1165 | ..... | ..... |
| 386. | Oliver Seifferle | Transfer | 637 | 12.74 | 12.74 |
| 387. | Edward Hirstel | Transfer | 500 | 10.00 | 10.00 |
| 388. | Fred J. Meindle | Transfer | 500 | 10.00 | 10.00 |
| 389. | Henry McKnight | Transfer | 200 | 4.00 | 4.00 |
| 390. | C. H. Griffith | Transfer | | 2.00 | 2.00 |
| | | | | \$5134.55 | \$1275.64 |

ANALYSIS OF VOTING TRUST CERTIFICATES TAXED
UNDER ITEM 15

| Cert. No. | To Whom Issued | Description of Issue | Number Shares | Tax Assessed and Paid | Correct Tax as claimed by Taxpayer |
|-----------|-------------------|-------------------------------------|------------------|--------------------------|--|
| 409. | B. P. Taylor | No Transfer— correction of error | 700 | 28.00 | ..... |
| 410. | E. J. Fleming | Transfer | 3500 | 140.00 | 140.00 |
| 411. | C. H. Griffith | Original Issue | 1000 | 40.00 | ..... |
| 412. | C. H. Griffith | “ “ | 1000 | 40.00 | ..... |
| 413. | C. H. Griffith | “ “ | 500 | 20.00 | ..... |
| 414. | C. H. Griffith | “ “ | 500 | 20.00 | ..... |
| 415. | C. H. Griffith | “ “ | 250 | 10.00 | ..... |
| 416. | C. H. Griffith | “ “ | 240 | 9.60 | ..... |
| 417. | C. C. Clarkson | No Transfer | 100 | 4.00 | ..... |
| | | | | \$311.60 | \$140.00 |

| | |
|--------------------------|----------|
| Tax originally assessed, | \$311.60 |
| Less stamps purchased, | 106.00 |
| | |

| | |
|-------------------------------|---------------|
| Tax finally assessed and paid | \$205.60 |
| CORRECT TAX | 140.00 |
| | |

| | |
|---|----------|
| AMOUNT illegally and erroneously assessed and paid under protest | \$ 65.60 |
|---|----------|

State of Oregon,
County of Multnomah—ss.

I, Clarence D. Phillips, being first duly sworn, depose and say that I am the Secretary of Portland Associates, Inc., the plaintiff in the above entitled cause: and that the foregoing Complaint is true, as I verily believe.

(Signed) CLARENCE D. PHILLIPS

Subscribed and sworn to before me this 16th day of August, 1937.

O. S. KROGSTAD,

Notary Public for the State
of Oregon.

My commission expires 6-17-
1938.

[Notarial Seal]

Filed August 16, 1937

G. H. MARSH, Clerk

By F. L. BUCK, Chief Deputy. [21]

[Title of District Court and Cause.]

SUPPLEMENTAL COMPLAINT

Pursuant to leave of court, upon the request of the above plaintiff, an Order was made and entered herein on October 1, 1937, granting permission to the above plaintiff to file Supplemental Complaint herein, the said plaintiff does hereby file its Supplemental Complaint in the above entitled cause and for additional cause of action against the above defendant complains and alleges as follows, to-wit:

I.

That at all times herein mentioned the above named plaintiff was a corporation organized and existing under by virtue of the laws of the State of Oregon, having its principal place of business in Portland, Multnomah County, Oregon, and that said corporation was voluntarily dissolved by resolution as of December 24, 1935, and since said date, and at the present time, is engaged in the process of liquidation, the collection of its debts and distribution of assets to its stockholders. [23]

II.

That at all times herein mentioned, the above defendant was and now is the duly appointed, qualified and acting Collector of Internal Revenue for the District of Oregon having his office in the City of Portland, Multnomah County, Oregon.

III.

That on or about January 11, 1936, the above defendant made and levied an assessment for documentary stamp taxes against the above plaintiff in the sum of Twenty-Eight Hundred (\$2800.00) Dollars and thereafter, and on or about January 22, 1936, the above defendant made demand upon the above plaintiff for the payment of said tax, together with penalties and interest thereon and thereafter and on or about the 8th day of February subsequent notice and demand was given by said defendant to the above plaintiff and pursuant thereto and on February 16, 1937, the above plaintiff paid to the above defendant, under protest, the

sum of \$2800.00 together with penalty and interest thereon in the sum of \$175.81 or a total payment of \$2,975.81 on account of said documentary stamp taxes.

IV.

That thereafter and on or about February 17, 1937 the above plaintiff filed with the above defendant its claim for refund in the sum of \$2,975.81, including \$2800.00 documentary stamp taxes and \$175.81 interest and penalties and claimed a refund in the total amount of \$2,975.81. [24]

V.

That thereafter and on or about the 18th day of September, 1937, the Commissioner of Internal Revenue of the United States, rejected plaintiff's claim for refund in the total amount of \$2,975.81.

VI.

That more than six months have elapsed since the date of the filing of said claim for refund and that the said claim for refund has now been rejected in the total amount.

VII.

That said documentary stamp taxes were erroneously and unlawfully collected by the above defendant from the above plaintiff and that there is now due and owing from the above defendant to the above plaintiff, the sum of \$2,975.81, together with interest thereon at the rate of 6% per annum from February 16, 1937, in addition to the amounts claimed by the above plaintiff, in its original complaint filed herein.

VIII.

That said documentary stamp taxes were claimed by the above defendant on account of purported options given by the above plaintiff to various individuals, that said purported options were unilateral in their character and only cited upon the minute records of the corporation, never acted upon by the individuals, nor accepted by the individuals whom the same were purported to have been granted, and without any consideration therefor, and that there was no agreement between the above plaintiff and the said individuals for the sale [25] or purchase of any stock of the above plaintiff, upon which a documentary stamp tax could lawfully be assessed.

IX.

That there is attached hereto and referred to herein by reference for the purposes of this Supplemental Complaint, and made a part hereof, a full, true and correct copy of the claim for refund in the above matter and the schedules attached thereto.

X.

That the above entitled plaintiff was unable to include the above claim in its original complaint filed herein for the reason that the claim refund had not yet been denied by the Commissioner of Internal Revenue and that the claim for refund was denied subsequent to the filing of the original complaint herein.

Wherefore, Plaintiff prays for judgment in accordance with the prayer of its original complaint

filed herein and in addition thereto for judgment in favor of the plaintiff and against the defendant in the additional amount of \$2975.81 together with interest thereon at the rate of 6% per annum from February 16, 1937, together with plaintiff's costs and disbursements herein.

GRIFFITH, PECK & COKE,
Attorneys for Plaintiff [26]

“EXHIBIT A”

CLAIM

To be filed with the collector where assessment was made or tax paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

-Refund of Tax Illegally Collected.
-Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
-Abatement of Tax Assessed (not applicable to estate or income taxes.)

State of Oregon,
County of Multnomah—ss.

Name of taxpayer or purchaser of stamps Portland Associates, Inc., a corporation of Oregon.

Business address 505 Electric Bldg., Portland, Oregon.

Residence.....

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed
No return filed—Documentary Stamp Taxes

2. Period (if for income tax, make separate form for each taxable year) from....., 19....., to....., 19.....

3. Character of assessment or tax Documentary Stamp Taxes

4. Amount of assessment, \$2800.00 and int., dates of payment February 16, 1937

5. Date stamps were purchased from the Government

6. Amount to be refunded 2800.00 plus interest—total \$2975.81

7. Amount to be abated (not applicable to income or estate taxes)..... \$.....

8. The time within which this claim may be legally filed expires, under Section 322 of the Revenue Act of 19....., on February 16, 1939

The deponent verily believes that this claim should be allowed for the following reasons:

See separate sheets attached hereto referred to herein and by reference for the purposes of this claim for refund, made a part hereof.

[Signed] PORTLAND ASSOCIATES,
INC.
FRANKLIN T. GRIFFITH,
President

Sworn to and subscribed before me this
day of, 193

CLARENCE D. PHILLIPS, Notary Public
[27]

Certificate

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

[Printer's Note: Form not filled out.]

I certify that the records of this office show the following facts as to the purchase of stamps:

[Printer's Note: Form not filled out.]

.....

Collector of Internal Revenue District
Committee on Claims

Amount claimed..... \$.....
Amount allowed..... \$.....
Amount rejected..... \$.....

Instructions

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or at-

torney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

The assessments for documentary stamp taxes amounted to \$2800.00. It is the contention of the claimant and taxpayer that the sum of \$2800.00 was erroneously and illegally assessed and collected and payment of said taxes with penalty and interest was made by the taxpayer under protest pursuant to notice of levy in that the taxes for which re-

fund is claimed herein were not due or legally assessable or taxable under the statutes of the United States providing for documentary stamp tax.

The claim for refund is based upon the purported transfers or options to Paul Stock, 15,000 shares, E. W. Battleson, 10,000 shares and Franklin T. Griffith, 10,000 shares, total, 35,000 shares. The only evidence of these options is an authorization found in the minutes of the Corporation whereby the Corporation granted to each of the above individuals options to purchase the respective number of shares as above set forth at One (\$1.00) Dollar per share. The options were never exercised and the stock was never issued in accordance with the purported options and no option contract was entered into between the Corporation and the parties named. It was nothing more than a recitation in the minutes. Nothing was paid by any of said individuals to the Corporation on account of said stock. It is the contention of the claimant and taxpayer that a unilateral offer on behalf of the corporation which was never accepted by the individuals is not taxable.

The claimant and taxpayer also contends that even in the event that options were taxable that they were not taxable at the rate of four cents per share but only taxable at the most at the rate of two cents per share. The recitations in the minutes of this Corporation are found in the minutes of an adjourned meeting of the Board of Directors

held on January 27, 1932. All taxable transfers of stock prior to June 21, 1932, carried a rate of two cents per share. [28]

the 35,000 shares of stock represented by voting trust certificates which were delivered by Paul Stock to the Corporation during 1935 was not a taxable transfer and the claimant and taxpayer contends that it was not a taxable transfer. This stock was delivered to the Corporation for cancellation and it is the contention of the claimant and taxpayer that stock delivered to the issuing Corporation for cancellation is not a taxable transfer.

State of Oregon,
County of Multnomah—ss.

I, Clarence D. Phillips being first duly sworn, depose and say that I am the Assistant Secretary of Portland Associates, Inc. in the above entitled action; and that the foregoing Supplemental Complaint is true, as I verily believe.

CLARENCE D. PHILLIPS

Subscribed and sworn to before me this 7th day of October, 1937.

[Seal]

EARL S. NELSON,

Notary Public for the State
of Oregon.

My commission expires Dec.
4, 1940

Filed October 8, 1937

G. H. MARSH, Clerk

By F. L. BUCK, Chief Deputy. [29]

[Title of District Court and Cause.]

ANSWER OF THE DEFENDANT

Comes now the above named defendant, J. W. Maloney, Collector of Internal Revenue, Portland, Oregon, by his attorney, Carl C. Donough, United States Attorney for the District of Oregon, and, for answer to the complaint filed herein by the plaintiff, generally and specifically denies each and every allegation contained in said complaint except such as are hereinafter specifically admitted, qualified or denied, and says:

I.

Answering paragraph I of the plaintiff's complaint filed herein, the defendant says that he has no knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in said paragraph and the defendant, therefore, denies the allegations contained in said paragraph I, except that the defendant admits that at all times herein mentioned the above named plaintiff was a corporation organized and existing under and by virtue of the laws of the State of Oregon, having its principal place of business in Portland, Multnomah County, Oregon.

II.

Defendant admits the allegations contained in paragraph II of the said complaint.

III.

Defendant denies the allegations contained in paragraph III of the [31] said complaint. Further answering paragraph III of the said complaint, the defendant says that in October, 1933, the Commissioner of Internal Revenue assessed the plaintiff documentary stamp taxes in the sum of \$9,772.29, and in November, 1935, assessed a penalty thereon of 5 percent thereof in the amount of \$488.61 and interest in the amount of \$1,942.73.

IV.

Defendant denies the allegations contained in paragraph IV of the said complaint. Further answering paragraph IV of the said complaint, the defendant says that in November, 1933, the Commissioner of Internal Revenue assessed the plaintiff documentary stamp taxes in the sum of \$205.60, and that in November, 1935, the Commissioner assessed the plaintiff a penalty thereon of 5 percent in the sum of \$10.28, together with interest thereon in the sum of \$2.60, and additional interest on stamp taxes previously assessed in the sum of \$41.29.

V.

Defendant admits the allegations contained in paragraph V of the said complaint.

VI.

Answering paragraph VI of the said complaint, the defendant denies that on or about March 2,

1935, the plaintiff paid to the defendant the sum of \$2,975.81. Further answering said paragraph VI, the defendant admits that on or about November 2, 1935, the plaintiff paid to this defendant, under protest, the sum of \$10,474.30, being the balance claimed to be due and owing for documentary stamp taxes, and that thereafter this defendant caused the liens hereinbefore referred to to be satisfied and discharged of record. Further answering said paragraph VI of the complaint, the defendant says that on March 5, 1935, the plaintiff paid to him, as Collector of Internal Revenue, under protest, the sum of \$1,989.10 as documentary stamp taxes previously assessed by the Commissioner of Internal Revenue.

VII.

Defendant denies the allegations contained in paragraph VII of the [32] said complaint. For further answer to paragraph VII of the said complaint, the defendant says that on November 15, 1935, the plaintiff filed with the defendant, as Collector of Internal Revenue, a claim for refund of documentary stamp taxes, penalties and interest, previously paid, in the sum of \$10,298.18; that of the said amount claimed to be refundable, the sum of \$8,124.51 represented stamp taxes previously assessed and paid and \$2,173.67 thereof represented penalties and interest previously assessed and paid on said stamp taxes.

VIII.

Defendant admits the allegations contained in paragraph VIII of the said complaint, except that the defendant denies that the amount of the refund authorized and determined by the Commissioner of Internal Revenue was \$2,950, as alleged in said paragraph, and says that the amount of the said refund authorized by the said Commissioner was \$2,950.90. Further answering paragraph VIII of the said complaint, the defendant says that of the sum of \$2,950.90 which the Commissioner allowed and authorized be refunded to the plaintiff, \$2,300 represented a refund of documentary stamp taxes previously assessed by the Commissioner and paid by the plaintiff and \$650.90 represented a refund of penalties and interest previously assessed by the Commissioner and paid by the said plaintiff.

IX.

Defendant admits the allegations contained in paragraph IX of the said complaint.

X.

Answering paragraph X of the said complaint, the defendant says that the allegations therein contained are conclusions of law to which he is not required to make answer herein, and, to the extent that any of the allegations contained in said paragraph X are allegations of fact each and every such allegation the defendant specifically denies.

XI.

Defendant denies the allegations contained in paragraph XI of the said complaint.

XII.

Answering paragraph XII of the said complaint, and the subparagraphs [33] thereof designated (a), (b), (c), (d) and (e), the defendant says that the allegations contained therein are conclusions of law and argument, to which he is not required to reply herein, and, to the extent that all or any of the statements contained in said paragraph XII, or any of the said subparagraphs thereof, may be allegations of fact, all and each of said allegations the defendant specifically denies.

Wherefore, the defendant prays upon consideration hereof that the plaintiff's complaint be dismissed and that the defendant be awarded his costs herein, and for such other and further relief as may be proper in the premises.

CARL C. DONAUGH,

United States Attorney for
the District of Oregon

By M. B. STRAYER,

Assistant United States
Attorney.

State of Oregon,
County of Multnomah—ss.

I, M. B. Strayer, being first duly sworn, depose and say: That I am a duly appointed, qualified and

acting Assistant United States Attorney for the District of Oregon; that I have read the foregoing Answer and that the allegations therein contained are true as I verily believe.

M. B. STRAYER,
Assistant United States
Attorney.

Subscribed and sworn to before me this 10th day of November, 1937.

[Seal] ALLAN HART,
Notary Public for Oregon
My Commission expires: Nov.
18, 1939

Filed November 10, 1937

G. H. MARSH, Clerk

By F. L. BUCK, Chief Deputy. [34]

[Title of District Court and Cause.]

PLAINTIFF'S REPLY TO ANSWER OF
DEFENDANT

Comes now the above plaintiff and in Reply to the Answer of the defendant filed herein, admits, denies and alleges as follows, to-wit:

I.

Admits the affirmative allegations made by the above defendant in paragraphs III, IV, VI, VII and VIII of defendant's answer.

II.

Except as hereinbefore expressly admitted, stated or qualified and except as may be alleged in plaintiff's complaint this plaintiff denies each and every other affirmative allegation contained in defendant's answer.

Wherefore, Plaintiff having fully replied to defendant's answer prays that judgment be for the plaintiff in accordance with the prayer of plaintiff's complaint filed herein.

GRIFFITH, PECK & COKE

CLARENCE D. PHILLIPS

Of Plaintiff's Attorneys. [36]

State of Oregon,

County of Multnomah—ss.

I, Clarence D. Phillips being first duly sworn, depose and say that I am the Secretary of Portland Associates, Inc., in the above entitled action; and that the foregoing Plaintiff's Reply to Answer of Defendant is true, as I verily believe.

CLARENCE D. PHILLIPS

Subscribed and sworn to before me this 22nd day of November, 193.....

[Seal]

JOHN M. COKE,

Notary Public for the State
of Oregon.

My commission expires Nov.
19th, 1938.

Filed November 22, 1937

G. H. MARSH, Clerk

By F. L. BUCK, Chief Deputy. [37]

[Title of District Court and Cause.]

ANSWER OF THE DEFENDANT TO PLAINTIFF'S SUPPLEMENTAL COMPLAINT

Comes now the above named defendant, J. W. Maloney, Collector of Internal Revenue, Portland, Oregon, by his attorney, Carl C. Donough, United States Attorney for the District of Oregon, and, for answer to the supplemental complaint filed herein by the plaintiff, generally and specifically denies each and every allegation contained in said supplemental complaint except such as are hereinafter specifically admitted, qualified or denied, and says:

I.

Answering paragraph I of the plaintiff's supplemental complaint filed herein, the defendant says that he has no knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in said paragraph and the defendant, therefore, denies the allegations contained in said paragraph I, except that the defendant admits that at all times herein mentioned the above-named plaintiff was a corporation organized and existing under and by virtue of the laws of the State of Oregon, having [39] its principal place of business in Portland, Multnomah County, Oregon.

II.

Defendant admits the allegations contained in paragraph II of the said supplemental complaint.

III.

Defendant denies the allegations contained in paragraph III of the said supplemental complaint. Further answering paragraph III of the said supplemental complaint, defendant says that on or about January 11, 1936, the Commissioner of Internal Revenue assessed against the plaintiff documentary stamp taxes in the sum of \$2,800.00 which, together with interest thereon of \$175.81, was paid to the defendant as Collector of Internal Revenue on February 17, 1937.

IV.

Defendant denies the allegations contained in paragraph IV of said supplemental complaint. For further answer to said paragraph IV of said supplemental complaint, the defendant says that on February 18, 1937, the plaintiff filed with the defendant as Collector of Internal Revenue, a claim for refund for documentary stamp taxes and interest previously paid in the sum of \$2,975.81.

V.

Defendant admits the allegations contained in paragraph V and VI of the said supplemental complaint.

VI.

Answering paragraph VII of the said supplemental complaint, the defendant says that the alle-

gations therein contained are conclusions of law to which he is not required to make answer herein, and to the extent that any of the allegations contained in said paragraph VII are allegations of fact, each and every such allegation the defendant specifically [40] denies.

VII.

Answering Paragraph VIII of the said supplemental complaint, the defendant says that the allegations contained are conclusions of law and argument to which he is not required to reply herein and to the extent that all or any of the statements contained in said Paragraph VIII may be allegations of fact, all, and each of said allegations the defendant specifically denies.

VIII.

Answering paragraph IX of the said supplemental complaint, defendant admits that there is attached to the said supplemental complaint a copy of claim for refund but each and every other affirmative allegation the defendant specifically denies.

IX.

Defendant denies the allegations contained in paragraph X of the said supplemental complaint.

Wherefore, the defendant prays upon consideration hereof that the plaintiff's supplemental complaint be dismissed and that the defendant be

awarded his costs herein, and for such other and further relief as may be proper in the premises.

CARL C. DONAUGH,

United States Attorney for
the District of Oregon.

By M. B. STRAYER,

Asst. United States Attorney

State of Oregon,
County of Multnomah—ss.

I, M. B. Strayer, being first duly sworn, depose and say: That I am a duly appointed, qualified and acting Assistant [41] United States Attorney for the District of Oregon; that I have read the foregoing Answer of the Defendant to Plaintiff's Supplemental Complaint and that the allegations therein contained are true as I verily believe.

M. B. STRAYER,

Assistant United States
Attorney

Subscribed and sworn to before me this 31st day of January, 1938.

[Seal]

ALLAN HART,

Notary Public for Oregon.

My commission expires: Nov.
18, 1939

Filed January 31, 1938

G. H. MARSH, Clerk

By F. L. BUCK, Chief Deputy. [42]

[Title of District Court and Cause.]

PLAINTIFF'S REPLY TO ANSWER OF DEFENDANT TO PLAINTIFF'S SUPPLEMENTAL COMPLAINT.

Comes now the above plaintiff and in reply to the answer of the defendant to plaintiff's supplemental complaint filed herein, admits, denies and alleges as follows, to-wit:

I.

Admits the affirmative allegations made by the above defendant, in paragraphs I, III, IV, of defendant's answer to plaintiff's supplemental complaint.

II.

Except as hereinbefore expressly admitted, stated or qualified and except as may be alleged in plaintiff's supplemental complaint, this plaintiff denies each and every other affirmative allegation contained in defendant's said answer.

Wherefore, Plaintiff having fully replied to defendant's answer to plaintiff's supplemental [44] complaint, prays that judgment be for the plaintiff in accordance with the prayer of plaintiff's complaint and plaintiff's supplemental complaint filed herein.

CLARENCE D. PHILLIPS
of Attorneys for Plaintiff

State of Oregon

County of Multnomah.—ss.

I, Clarence D. Phillips being first duly sworn, depose and say that I am the Secretary of Portland Associates, Inc., plaintiff in the above entitled action; and that the foregoing Reply is true, as I verily believe.

CLARENCE D. PHILLIPS

Subscribed and sworn to before me this 1st day of February, 1938.

[Seal] EARL S. NELSON

Notary Public for the State of Oregon. My commission expires Dec. 4, 1940.

Filed February 1, 1938.

G. H. Marsh, Clerk

By F. L. Buck, Chief Deputy. [45]

[Title of District Court and Cause.]

STIPULATION.

It is hereby stipulated by and between the parties to the above-entitled cause and their respective attorneys that the said cause may be tried to the Judge of this Court without the intervention of a jury, trial by jury herein being expressly waived, and that the Judge shall make and enter a special finding of the facts concerning the issues raised by the pleadings in said cause and a special statement

of his conclusions of law with respect thereto. Either party may except to such findings of fact and/or conclusions of law, or any part of the same.

Dated this 31 day of March, 1938.

CLARENCE D. PHILLIPS

Attorney for Plaintiff.

CARL C. DONAUGH

United States Attorney.

By M. B. STRAYER

Ass't United States Attorney.

THOMAS R. WINTER

Special Attorney, Bureau of
Internal Revenue.

Attorneys for Defendant.

Filed March 31, 1938.

G. H. Marsh, Clerk. [47]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT

Comes now the above plaintiff and moves the Court for a judgment in favor of the plaintiff and against the defendant in the sum of Seven Thousand Three Hundred Forty-seven and 28/100 Dollars (\$7,347.28), together with interest thereon at the rate of six per cent. per annum from November 2, 1935, together with the further sum of Two Thousand Nine Hundred Seventy-five and 81/100 Dollars (\$2,975.81), together with interest thereon at

the rate of six per cent, per annum from February 16, 1937, together with plaintiff's cross and disbursements herein.

GRIFFITH, PECK & COKE
CLARENCE D. PHILLIPS
Attorneys for Plaintiff.

State of Oregon
County of Multnomah.—ss.

I, Clarence D. Phillips one of attorneys for Plaintiff in the within entitled cause do hereby certify that the foregoing Motion is in my opinion well founded in law.

CLARENCE D. PHILLIPS

Filed April 8, 1938

G. H. Marsh, Clerk

By R. DeMott, Deputy. [49]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT.

Comes now the above-named defendant, J. W. Maloney, Collector of Internal Revenue, Portland, Oregon, by Carl C. Donough, United States Attorney for the District of Oregon, M. B. Strayer, Assistant United States Attorney for said District, and Thomas R. Winter, General Counsel Representative for the Bureau of Internal Revenue, his attorneys, and moves the Court for judgment in favor of the defendant and against the plaintiff dismissing

the plaintiff's complaint and plaintiff's costs on each of the grounds hereinafter stated as follows:

I.

Under the law, the pleadings and the evidence, with every inference of fact that may be fairly drawn therefrom, the plaintiff has failed to prove a cause of action against the defendant in any form.

II.

Under the law, the pleadings and the evidence, with every inference of fact that may be fairly drawn therefrom, are not sufficient to sustain findings of fact in favor of the plaintiff and against the defendant in any form. [51]

III.

Under the law, the pleadings and evidence, with every inference of fact that may be fairly drawn therefrom, are not sufficient to sustain conclusions of law in favor of the plaintiff and against the defendant in any form.

IV.

Under the law, the pleadings and evidence, with every inference of fact that may be fairly drawn therefrom, are not sufficient to sustain a judgment in favor of the plaintiff and against the defendant in any form.

V.

The record does not contain any substantial evidence to sustain a judgment in favor of the plaintiff and against the defendant in any form.

Wherefore, the defendant asks that in the event this motion for judgment is overruled or not sustained, that he be allowed exceptions thereto as and on each of the grounds therein stated, and further exceptions to all orders, findings, and conclusions entered or made by the court adverse to or against defendant, and any order of judgment thereon and entered in said cause against defendant.

CARL C. DONAUGH

United States Attorney

M. B. STRAYER

Ass't United States Attorney

THOMAS R. WINTER, General Counsel

Representative, Bureau of Internal Revenue

Filed March 31, 1938

G. H. Marsh, Clerk

By R. DeMott, Deputy. [52]



[Title of District Court and Cause.]

PLAINTIFF'S REQUESTED FINDINGS OF
FACT AND CONCLUSIONS OF LAW

To the Hon. Claude McCulloch, Judge of the above
entitled Court:

Comes now the above plaintiff, by Griffith, Peck
& Coke and Clarence D. Phillips, its Attorneys, and
based upon the evidence in the above cause requests

and moves the Court to make and adopt as its own the following:

FINDINGS OF FACT

I.

That at all times herein mentioned the above named plaintiff was a corporation organized and existing under and by virtue of the laws of the State of Oregon, having its principal place of business in Portland, Multnomah County, Oregon, and that said corporation was voluntarily dissolved by resolution as of December 24, 1935, and since said date, and at the present time, is engaged in the process of liquidation, the collection of its debts and distribution of assets to its stockholders. [54]

II.

That at all times herein mentioned, the above defendant was and now is the duly appointed, qualified and acting Collector of Internal Revenue for the District of Oregon having his office in the City of Portland, Multnomah County, Oregon.

III.

That on or about October of 1933, the Commissioner of Internal Revenue made and levied an assessment for documentary stamp taxes against the above plaintiff in the sum of \$9,772.29, together with a penalty of 5 per cent in the amount of \$488.61, together with interest thereon in the sum of \$123.42, making a total assessment of \$10,384.32, and thereafter on or about the 11th day of Decem-

ber, 1933, the above defendant gave notice of said assessment to the above plaintiff.

IV.

That on or about November, 1933, the Commissioner of Internal Revenue made an assessment against the above plaintiff on account of documentary stamp taxes in the sum of \$205.60 together with a penalty of 5 per centum in the sum of \$10.28, together with interest thereon in the sum of \$2.60, making a total assessment of \$218.48, together with an additional amount of interest in the sum of \$41.29, making a total assessment of \$259.77, and that the said defendant thereafter on or about the 11th day of December, 1933, gave notice of said assessment to the above plaintiff. [55]

V.

That thereafter the above defendant caused notice of tax lien, on account of said assessment, to be filed in Multnomah County, Oregon, Big Horn County, Wyoming, Park County, Wyoming, and Yellowstone County, Montana, the above plaintiff having property situated in said counties in Wyoming and Montana.

VI.

That on March 5, 1935, the plaintiff paid to the above defendant under protest the sum of \$1989.10 as documentary stamp taxes previously assessed by the Commissioner of Internal Revenue; that on or about November 2, 1935, the plaintiff paid to the

above defendant under protest the sum of \$10,474.30, being the balance claimed to be due and owing for documentary stamp taxes, and that thereafter the above defendant caused the said liens hereinbefore referred to to be satisfied and discharged of record.

VII.

That on November 15, 1935 the plaintiff filed with the defendant, as Collector of Internal Revenue, a claim for refund of documentary stamp taxes, penalties and interest previously paid in the sum of \$10,298.18; that of the said amount claimed to be refundable the sum of \$8,124.51 represented stamp taxes previously assessed and paid, and \$2,173.67 thereof represented penalties and interest previously assessed and paid on said stamp taxes.

VIII.

That thereafter, and on or about the 18th day [56] of February, 1937, the Commissioner of Internal Revenue of the United States authorized a refund upon said claim for refund in the amount of \$2,950.90, and rejected plaintiff's claim for refund in the sum of \$7,347.28; that thereafter, and on or about the 2nd day of March, 1937, the above defendant, in accordance with said ruling of the Commissioner upon said claim for refund, paid to the above plaintiff, as a refund, the sum of \$2,950.90, which represented a refund of documentary stamp taxes previously assessed by the Commissioner in the sum of \$2300.00, which was paid by the plaintiff, and

\$650.90 represented the refund of penalties and interest previously assessed by the Commissioner and paid by the plaintiff.

IX.

That prior to filing complaint herein more than six months elapsed since the date of the filing of said claim for refund, and that the Commissioner of Internal Revenue, on or about February 18, 1937, notified the above plaintiff by letter that said claim for refund had been rejected in the amount of \$7,347.28.

X.

That on or about January 11, 1936, the Commissioner of Internal Revenue made and levied an assessment for documentary stamp taxes against the above plaintiff in the sum of \$2800.00, and thereafter, and on or about January 22, 1936, the above defendant made demand upon the above plaintiff for the payment of said tax, together with penalties and interest thereon and thereafter and on or about the 8th day of February subsequent notice and demand was given by said defendant to the above [57] plaintiff and pursuant thereto and on February 16, 1937, the above plaintiff paid to the above defendant, under protest, the sum of \$2800.00, together with penalty and interest thereon in the sum of \$175.81 or a total payment of \$2,975.81 on account of said documentary stamp taxes.

XI.

That thereafter and on or about February 17, 1937 the above plaintiff filed with the above defendant its claim for refund in the sum of \$2,975.81, including \$2800.00 documentary stamp taxes and \$175.81 interest and penalties and claimed a refund in the total amount of \$2,975.81.

XII.

That thereafter and on or about the 18th day of September, 1937, the Commissioner of Internal Revenue of the United States, rejected plaintiff's claim for refund in the total amount of \$2,975.81.

XIII.

That prior to filing complaint herein more than six months elapsed since the date of the filing of said claim for refund and that the said claim for refund has now been rejected in the total amount.

XIV.

That on April 6, 1931 plaintiff corporation was organized under the laws of the State of Oregon, with an authorized capital stock of 350,000 shares, having a par value of \$1.00 per share; that on May 1, 1931 subscriptions were made to said capital stock as shown by the minute records of said corporations, in words [58] and figures as follows:

“C. R. GRIFFITH does hereby subscribe for 349,996 shares of the par value of \$1.00 per share, aggregating \$349,996.00 of PORTLAND ASSOCIATES, INC., an Oregon cor-

poration, and agrees to pay for the same by transferring and assigning to the corporation that certain indenture of lease entered into under day of March 13th, 1931 by and between Montana and Wyoming Oil Company as lessor and C. R. Griffith, trustee, as lessee, covering the following described real property in the county of Big Horn and state of Wyoming:

The southwest (SW) quarter of the southwest (SE) quarter and the southeast (SE) quarter of the southwest (SW) quarter of Section 28 in township 56 north of range 97 west of the sixth principal meridian, containing 80 acres more or less

and by transferring and delivering to the corporation that certain drilling contract dated April 16th, 1931 and secured by said trustee and his associates for this corporation from Paul Stock of Cody, Wyoming as driller.

“The undersigned agrees that if this conditional subscription is accepted that he will donate 249,996 shares of said capital stock to the corporation for sale by it upon such terms and conditions as it may desire to sell the same or for use by it in any manner it desires, subject however to a voting trust agreement to be executed prior to the time said stock is delivered to this corporation. In the event this conditional subscription is accepted the undersigned directs that 60,000 shares of said stock be issued to Casing-Head Gas & Oil Co., that 15,000

shares of said stock be issued to M. F. Swift, that 25,000 shares of said stock be issued to C. R. Griffith, and that the remaining 249,996 shares be issued to the Secretary of Portland Associates, Inc. in trust for said corporation and such distribution as may from time to time be determined upon by the directors of said Portland Associates, Inc.

C. R. GRIFFITH

“We, the undersigned, do hereby subscribe for the number of shares of capital stock of Portland Associates, Inc. set after our names and agree to pay therefor at the rate of \$1.00 per share upon call of said subscription.

| Name | Number of Shares |
|----------------------|------------------|
| Franklin T. Griffith | One |
| M. F. Swift | One |
| E. W. Battleson | One |
| S. M. Mears | One” [59] |

XV.

That the stockholders of said corporation accepted the offer of C. R. Griffith at a meeting of stockholders held May 1, 1931, and the directors of said corporation accepted said offer at a directors’ meeting held May 1, 1931.

XVI.

That certificate of stock No. 1 was issued to C. R. Griffith for 349,996 shares, and that certificates Nos. 2, 3, 4 and 5 were issued to Franklin T. Griffith,

S. M. Mears, E. W. Battleson and M. F. Swift for one share each, and that a documentary stamp tax was paid on the issuance of said certificates in the amount of \$175.20; thereafter certificate No. 1 was endorsed and transferred by C. R. Griffith to Franklin T. Griffith, C. R. Griffith and E. M. Steell, Trustees, transferring to said Trustees 349,995 shares, and certificate No. 6 for said number of shares was issued to said Trustees and a transfer tax in the amount of \$70.00 was paid thereon; that certificate No. 8 was a void certificate used as a specimen only; that certificate No. 9 was issued to Paul Stock for one share and certificate No. 10 was issued to H. K. Senor for one share, being transfers from the Trustees and a documentary stamp tax paid on such transfers in the sum of 4 cents.

XVII.

That a stamp tax was paid in the amount of \$3.00 on the authorization of C. R. Griffith to transfer 15,000 shares to M. F. Swift, and that a documentary [60] stamp tax of \$12.00 was assessed and paid on the authorization to transfer 60,000 shares to Casing-Head Gas & Oil Company.

XVIII.

That there was no transfer of stock from C. R. Griffith to Portland Associates, Inc. or to the treasury of said corporation, or to any one as an officer of said corporation.

XIX.

That on October 1, 1931 the Articles of Incorporation of the plaintiff were amended, changing and increasing the authorized capital stock of said corporation from 350,000 shares of the par value of \$1.00 each, to 750,000 shares without par value, and there were issued one share of no par value for each share of \$1.00 par value stock then outstanding.

XX.

That there was issued to Franklin T. Griffith, C. R. Griffith and E. M. Steell, as Trustees, certificate No. 7 representing 505,000 shares of the capital stock, which included 349,995 shares transferred to the Trustees above named by stock certificate No. 6 dated September 22, 1931, and the additional 155,005 shares were issued in addition thereto under authorization of the directors and stockholders of the corporation.

XXI.

That an original issue documentary stamp tax was paid upon said 155,000 shares in the sum of \$77.50; that there was no transfer to the Trustees as shown by the records of said corporation other than the issuance [61] of said certificate above mentioned.

XXII.

That the original subscription of C. R. Griffith for 349,996 shares of the capital stock of said corporation was conditioned upon the creation of a voting trust, and a voting trust agreement was

made and entered into as of May 1, 1931 between all of the stockholders of Portland Associates, Inc. and Franklin T. Griffith, C. R. Griffith and E. M. Steell as voting trustees, and that all of the stock of said corporation (except directors' qualifying shares) was held under the terms of said voting trust agreement, and that the Title and Trust Company, Portland, Oregon, acted as depositary under said agreement, and acted as agent of the voting trustees; that the voting trustees sold voting trust certificates to various individuals and received the money therefor and paid the same into the treasury of the corporation, and the voting trustees caused to be issued to the purchasers of said certificates voting trust certificates; that the above plaintiff, Portland Associates, Inc., was not a party to said voting trust agreement, and the above plaintiff corporation did not issue or cause to be issued any of the voting trust certificates, and that said voting trust agreement was made for the benefit of the stockholders of said corporation, and that said voting trust agreement expressly provided that the entire outstanding capital stock of Portland Associates, except directors' qualifying shares, has been acquired and transferred to the Trustees upon the express understanding and agreement that all of said shares of capital [62] stock will be assigned and delivered to the Trustees, the said Trustees to hold and exercise the rights appertaining thereto under the terms of said agreement.

XXIII.

That no stock certificates have been issued by the above plaintiff corporation except stock certificates to the said voting trustees and directors' qualifying shares of one share each to each of the directors of said corporation; and that no person had any right to receive shares of stock in the above plaintiff corporation or certificates representing shares of stock issued by the above plaintiff corporation except said voting trustees and the directors qualifying, one share each.

XXIV.

That among other things there was assessed, levied against and collected from the above plaintiff a documentary stamp tax in the sum of \$3100.00 as a transfer tax upon 155,000 shares of stock; that the records of said corporation do not show any transfer of 155,000 shares of the capital stock upon which such tax can be assessed, levied or collected.

XXV.

That among other things there was assessed, levied against and collected from the above plaintiff the sum of \$50.00 documentary stamp tax on a transfer of stock from C. R. Griffith to the treasury of said corporation; that the records of said corporation do not show any transfer upon which such tax can be assessed, levied or collected. [63]

XXVI.

That among other things there was assessed, levied against and collected from the above plaintiff

a documentary stamp tax in the sum of \$140.00 on purported transfers as of June 20, 1932; that the records of said corporation do not disclose any transfer of capital stock as of June 20, 1932 upon which said tax could be levied, assessed or collected.

XXVII.

That among other things there has been assessed and levied against and collected from said plaintiff corporation the sum of \$120.00 upon a purported transfer subsequent to June 21, 1932, and that a refund has been made thereon in the sum of \$60.00, leaving an assessment and collection on account thereof in the sum of \$60.00; that the records of said corporation do not disclose any such transfer of capital stock upon which a documentary stamp tax could be assessed, levied or collected.

XXVIII.

That there has been assessed, levied against and collected from said corporation documentary stamp taxes on purported transfers of voting trust certificates, including a transfer tax on all of the voting trust certificates which are shown upon the voting trust certificate books to be original issues of voting trust certificates; that none of said voting trust certificates were issued by the above plaintiff corporation, and that none of said voting trust certificates were transferred by said corporation, nor did the above corporation transfer any right to receive said voting trust [64] certificates and that there was

no transfer of certificates or of the right to receive by the above plaintiff corporation upon said voting trust certificates listed in the voting trust certificate books as original issues upon which a tax could be assessed, levied or collected, and that said voting trust certificates are as follows:

1 to 38, inclusive, 41, 42, 46 to 52, inclusive, 54 to 66, inclusive, 68 to 118, inclusive, 127, 129, 157, 158, 204 to 208, inclusive, 222, 223, 233 to 236, inclusive, 244 to 247, inclusive, 276 to 284 inclusive, 290, 294 to 334, inclusive, 339 to 342, inclusive, 359, 360, 361, 374, 411 to 416, inclusive.

XXIX.

That documentary stamp tax on transfer was assessed and levied against and collected from the above corporation on certain voting trust certificates; that the records of said corporation show that there was no transfer of said certificates, which are numbered as follows:

228, 409 and 417.

XXX.

That the minute records of the plaintiff corporation show that at an adjourned meeting of the Board of Directors held January 27, 1932, resolutions were adopted as follows:

RESOLVED that this corporation purchase all of the capital stock of Big Horn Oil & Refining Company, a corporation duly incorporated under the laws of the State of Montana, in ac-

cordance with the proposition which has been submitted to this corporation by Mr. Paul Stock, representing the owners of all of the issued and outstanding stock of said Big Horn Oil & Refining Company, and in payment therefor issue 95,000 shares of the capital stock of this corporation as follows:

| | |
|--------------------|--------------|
| To Jeff Tingle | 2,000 shares |
| E. J. Fleming | 10,000 “ |
| Mrs. E. E. Fleming | 2,000 “ |
| T. R. Graham | 1,000 “ |
| | [65] |
| J. E. Simon | 500 shares |
| R. J. O'Malley | 2,000 “ |
| J. G. Everett | 19,000 “ |
| G. H. Downs | 1,000 “ |
| Paul Stock | 57,500 “ |

BE IT FURTHER RESOLVED that in consideration of Mr. Paul Stock's assuming and agreeing to pay or cancel the following indebtedness of said Big Horn Oil & Refining Company as shown by the audit of the books of said company of December 31, 1931, to-wit:

| | |
|---|------------|
| Paul Stock | \$3,929.45 |
| E. J. Fleming | 3,500.00 |
| J. G. Everett, representing the claim of Associated Independent Dealers | 1,331.72 |
| J. G. Everett | 1,000.00 |

this corporation hereby grants to said Paul Stock the option to purchase 15,000 shares of the capital stock of this corporation at \$1.00 per share at any time prior to July 31, 1932."

"RESOLVED that in consideration of his lending this corporation the sum of \$10,000, Mr. E. W. Battleson be and he hereby is granted an option to purchase 10,000 shares of the capital stock of this corporation at any time prior to July 31, 1932, at the price of \$1.00 per share."

"RESOLVED that in consideration of his lending this corporation the sum of \$10,000, Mr. Franklin T. Griffith be and he hereby is granted an option to purchase 10,000 shares of the capital stock of this corporation at any time prior to July 31, 1932, at the price of \$1.00 per share."

that no option agreements were made in writing between the corporation and the respective parties mentioned in said resolution; that no money was ever paid by any of the persons mentioned in said resolutions for the purchase of any stock as mentioned in said purported options, and that no stock was ever issued by the above plaintiff corporation to any of said persons on account of said purported options, and that none of said persons ever received any such stock and did not have the right to [66] receive such stock unless and until they should pay the money therefor; that there was no issuance or

transfer of any stock in said corporation to any of said persons which was subject to documentary stamp tax either for issuance or transfer on account of the recitations in said minutes.

XXXI.

That there is no competent evidence to show that there were 35,000 shares of capital stock of the plaintiff corporation assigned, transferred or delivered by Paul Stock to the above plaintiff corporation, and that there is no competent evidence that 35,000 shares of capital stock of said corporation were issued to said Paul Stock; that the only certificates which the record shows were issued to Paul Stock were voting trust certificates, and that the above plaintiff corporation was not a party to said voting trust agreement.

CONCLUSIONS OF LAW

I.

That the tax assessed and collected in the sum of \$3100.00 on 155,000 shares was unlawfully and erroneously assessed and collected, and that the plaintiff is entitled to a refund thereof, together with interest and penalties levied and collected in addition thereto.

II.

That the tax assessed and collected in the sum of \$50.00 on 249,996 shares of stock was assessed and

collected unlawfully and erroneously, and that the plaintiff is entitled to recover the said \$50.00, together [67] with interest and penalties collected in addition thereto.

III.

That the tax assessed and collected in the sum of \$140.00 on 7000 shares was assessed and collected unlawfully and erroneously, and that the plaintiff is entitled to recover said \$140.00, together with interest and penalties assessed and collected in addition thereto.

IV.

That the tax assessed and collected in the sum of \$60.00 on 3000 shares was assessed and collected unlawfully and erroneously, and that the plaintiff is entitled to recover said \$60.00, together with any penalties and interest assessed and collected in addition thereto.

V.

That the tax assessed and collected in the sum of \$2,408.91 on original issues of voting trust certificates was assessed and collected unlawfully and erroneously, and that the plaintiff is entitled to recover said sum, together with any and all penalties and interest assessed and collected in addition thereto.

VI.

That the tax assessed and collected in the sum of \$65.60 on voting trust certificates was unlawfully and erroneously assessed and collected, and that the plaintiff is entitled to recover the said sum of \$65.60,

together with any and all penalties and interest assessed and collected in addition thereto. [68]

VII.

That the resolutions of the Board of Directors adopted January 27, 1932, referring to certain options, do not constitute taxable transfers under Schedule A-3 of Title VIII of the Revenue Act of 1926, and that the tax assessed and collected in the sum of \$1400.00 thereon was unlawfully and erroneously assessed and collected, and that the plaintiff is entitled to recover said \$1400.00, together with any and all penalties and interest assessed and collected in addition thereto.

VIII.

That the tax assessed and collected in the sum of \$1400.00 on purported transfer of capital stock by Paul Stock was unlawfully and erroneously assessed and collected, and that the plaintiff is entitled to recover said sum of \$1400.00, together with any and all penalties and interest assessed and collected in addition thereto.

IX.

That plaintiff is entitled to a judgment against the above defendant upon its original complaint in the sum of \$7,347.28, together with interest thereon at the rate of 6 per cent. per annum from November 2, 1935, and upon its supplemental complaint for a judgment against the defendant in the sum of \$2975.81, together with interest thereon at the

rate of 6 per cent. per annum from February 16, 1937, together with plaintiff's costs and disbursements in this action.

Respectfully submitted,

CLARENCE D. PHILLIPS

Of Attorneys for Plaintiff.

Filed April 8, 1938

G. H. Marsh, Clerk

By F. L. Buck, Chief Deputy. [69]

[Title of District Court and Cause.]

DEFENDANT'S REQUESTED FINDINGS OF
FACT AND CONCLUSIONS OF LAW.

To the Honorable Claude McCulloch, Judge of the
above-entitled Court:

Comes now the above-named defendant by Carl C. Donough, United States Attorney, for the District of Oregon, and M. B. Strayer, Assistant United States Attorney, and Thomas R. Winter, General Counsel Representative for the Bureau of Internal Revenue, his attorneys, and, based upon the evidence adduced, requests and moves the Court to make and adopt as its own, the following:

FINDINGS OF FACT

I.

That at all times herein mentioned, the above-named plaintiff was a corporation organized and

existing under and by virtue of the laws of the State of Oregon, having its principal place of business in Portland, County of Multnomah, Oregon, and that the said corporation was voluntarily dissolved by resolution as of December 24, 1935, and since that date, and at the present time, is engaged in the process of liquidation, the collection of its debts and distribution of assets to its stockholders.

II.

That since the 17th day of July, 1933, the above-named defendant was, and now is, the duly appointed, qualified and Acting Collector of Internal Revenue for the District of Oregon, having his office in the City of Portland, County of Multnomah, Oregon.

III.

That on the 6th day of April, 1931, plaintiff corporation was organized under the laws of the State of Oregon, with an authorized capital stock [71] of 350,000 shares having a par value of \$1.00 per share and that on May 1, 1931, C. R. Griffith and others subscribed for all of the stock of said corporation and paid for the same by assigning and transferring to the plaintiff corporation on May 1, 1931, an oil and gas lease on eighty acres of land in Big Horn County, State of Wyoming; that as a part of said subscription, it was agreed that if the subscription was accepted by the plaintiff corporation, that the said C. R. Griffith would donate back to the plaintiff corporation 249,996 shares of

said capital stock for the use and benefit of the plaintiff corporation and he directed that the balance of 60,000 shares be issued in Casing-Head Gas & Oil Company, 15,000 shares to M. F. Swift, and 25,000 shares to himself, C. R. Griffith; that the subscription of C. R. Griffith for 349,996 shares was accepted by plaintiff corporation and notwithstanding the provisions of the subscription stock, Certificate No. 1 for 349,996 shares was issued May 1, 1931, in the name of C. R. Griffith, which stock certificate was assigned and transferred by C. R. Griffith to Franklin T. Griffith, et al, trustees; that subsequently said certificate was surrendered to the plaintiff corporation for cancellation and transfer and Certificate No. 6, dated September 22, 1931, was issued by plaintiff corporation transferring 349,995 of such shares to Franklin T. Griffith, et al, trustees; that Franklin T. Griffith, et al, were the voting trustees under a voting trust agreement dated as of May 1, 1931, by and between all of the stockholders of the plaintiff corporation and Franklin T. Griffith, et al, trustees.

IV.

That on October 1, 1931, the plaintiff corporation's Articles of Incorporation were amended, changing and increasing its shares of capital stock from 350,000 shares of \$1.00 par value each to 750,000 shares without par or face value and issued one share of no par shares for each of the \$1.00 par value shares then outstanding.

V.

That subsequent to the increase and change of said capital stock, various persons subscribed for additional 155,000 of the new no par value shares, all of which were issued on April 5, 1932, to Franklin T. Griffith, et al, trustees, as shown by the one stock Certificate No. 7 for 505,000 shares which [72] includes 349,995 shares transferred to the trustees shown by stock Certificate No. 6, dated September 22, 1931, and which stock certificate was surrendered to plaintiff corporation for cancellation.

VI.

That one of the items claimed by the plaintiff in its complaint as an erroneous assessment and collection of tax is the tax of 2c per share on the transfer of the rights of various persons (subscribers for such shares) to receive 155,000 shares of stock, which shares of stock were represented by Certificate No. 7 for 505,000 shares issued to the trustees, the same being Item No. 5 of the Commissioner of Internal Revenue notice of adjustment of claim for refund which was rejected in the amount of \$3,100.00.

VII.

That one of the items claimed by the plaintiff in its complaint as an erroneous assessment and collection of tax is the tax of 2c for \$100.00 or fraction thereof of the par or face value of 249,996 shares of the stock donated by C. R. Griffith to the

plaintiff corporation, the same being Item No. 8 of the Commissioner of Internal Revenue notice of adjustment of claim for refund which was rejected in the amount of \$50.00.

VIII.

That two of the items claimed by the plaintiff corporation in its complaint as erroneous assessments and collections of tax is 2c per share on the transfer on the part of the plaintiff corporation of its right to receive voting trust certificates representing 7,000 and 3,000 shares of treasury stock deposited by the plaintiff corporation with the trustees, the same being Items 12 and 13 of the Commissioner of Internal Revenue notice of adjustment of claim for refund which was rejected in the amount of \$140.00 and \$60.00 respectively.

IX.

That one of the items claimed by the plaintiff corporation in its complaint as an erroneous assessment and collection of tax is 2c per \$100.00 or fraction thereof of the par value of the shares and 2c per share of the no par shares on the transfer on the part of the depositors of said stock of their rights to receive voting trust certificates representing shares of plaintiff corporation [73] stock as shown by voting trust certificates No. 1 to No. 150, inclusive, and No. 151 to No. 390, inclusive, save and except the tax on the transfers conceded by the plaintiff in its complaint and exhibit attached

thereto. This is Item No. 14 of the Commissioner of Internal Revenue notice of adjustment of claim for refund which was rejected in the amount of \$2,408.91.

X.

That one of the items claimed by the plaintiff corporation in its complaint as an erroneous assessment and collection of tax is 4c per share, no par value shares, on the transfer and the transfer on the part of depositors of said stock with the trustees of their rights to receive voting trust certificates No. 409 to No. 417, inclusive, less \$140.00 tax on Certificate No. 410, conceded by plaintiff and \$106.00 paid by stamps purchased and affixed by plaintiff. This is Item No. 15 of the Commissioner of Internal Revenue notice of adjustment of claim for refund, which was rejected in the amount of \$65.60.

XI.

That in October, 1933, the Commissioner of Internal Revenue assessed documentary stamp taxes in the sum of \$9,772.29 and in November, 1935, assessed a penalty thereon of five per cent thereof in the amount of \$488.61 and interest in the amount of \$1,942.73.

XII.

That in November, 1933, the Commissioner of Internal Revenue assessed against the plaintiff documentary stamp tax in the amount of \$205.60 and in November, 1935, the Commissioner of Internal

Revenue assessed a penalty of five per cent in the sum of \$10.28, together with interest thereon in the sum of \$2.60 and additional interest on stamp taxes previously assessed in the amount of \$41.29.

XIII.

That thereafter, the defendant caused notice of tax lien on account of said assessments to be filed in Multnomah County, Oregon, Big Horn County, Wyoming, Park County, Wyoming, and Yellowstone County, Montana, the plaintiff having property situated in said counties in Wyoming and Montana. [74]

XIV.

That on or about November 4, 1935, plaintiff paid to this defendant under protest the sum of \$10,474.30, being the balance claimed to be due and owing for documentary stamp taxes and that thereafter the defendant caused the liens hereinbefore referred to be satisfied and discharged of record; that on March 5, 1935, the plaintiff paid to the defendant as Collector of Internal Revenue, under protest, the sum of \$1,989.10 as documentary stamp taxes previously assessed by the Commissioner of Internal Revenue; that on November 15, 1935, the plaintiff filed with the defendant as Collector of Internal Revenue, claim for refund for documentary stamp taxes, penalty and interest, previously paid in the sum of \$10,298.18; that of the said amount claimed to be refundable, the sum of \$8,124.51 represented stamp taxes previously as-

essed and paid, and \$2,173.67 thereof represented penalties and interest previously assessed and paid on said stamp taxes.

XV.

That on or about the 18th day of February, 1937, the Commissioner of Internal Revenue authorized and paid a refund upon said claim in the amount of \$2,950.90 and rejected plaintiff's claim for refund in the sum of \$7,347.28; that of the said sum of \$2,950.90, which the Commissioner allowed and authorized to be refunded and paid to the plaintiff, \$2,300.00 represented a refund of documentary stamp taxes previously assessed by the Commissioner and paid by the plaintiff and \$650.90 represented a refund of penalties and interest previously assessed by the Commissioner and paid by the said plaintiff.

XVI.

That on or about February 18, 1937, the Commissioner of Internal Revenue notified the plaintiff by letter that said claim for refund had been rejected in the amount of \$7,347.28.

XVII.

That no part of said \$7,347.28 has been refunded to the plaintiff or anyone else. [75]

XVIII.

That the Board of Directors of the plaintiff corporation in a meeting held Jan. 27, 1932, granted options to Paul Stock, E. W. Battleson and Frank-

lin T. Griffith, to purchase 35,000 shares of plaintiff corporation capital stock as shown by the following resolutions:

“Be It Further Resolved that in consideration of Mr. Paul Stock’s assuming and agreeing to pay or cancel the following indebtedness of said Big Horn Oil & Refining Company as shown by the audit of the books of said company of December 31, 1931, to-wit:

| | |
|---|------------|
| Paul Stock..... | \$3,929.45 |
| E. J. Fleming..... | 3,500.00 |
| J. G. Everett, representing the claim of Associated Independent Dealers | 1,331.72 |
| J. G. Everett..... | 1,000.00 |

this corporation hereby grants to said Paul Stock the option to purchase 15,000 shares of the capital stock of this corporation at \$1.00 per share at any time prior to July 31, 1932.”

“Resolved that in consideration of his lending this corporation the sum of \$10,000, Mr. E. W. Battleson be and he hereby is granted an option to purchase 10,000 shares of the capital stock of this corporation at any time prior to July 31, 1932, at the price of \$1.00 per share.”

“Resolved that in consideration of his lending this corporation the sum of \$10,000, Mr. Franklin T. Griffith be and he hereby is granted an option to purchase 10,000 shares of the capital stock of this corporation at any time prior

to July 31, 1932, at the price of \$1.00 per share.”

XIX

That early in the year 1935, Mr. Paul Stock assigned and delivered to plaintiff corporation voting trust certificates representing 35,000 shares no par value of the plaintiff corporation’s capital stock in exchange for an oil and gas lease which lease was originally assigned and transferred to the plaintiff corporation by Mr. Paul Stock on February 1, 1932, in payment for 35,000 shares of stock in plaintiff corporation.

XX

That the items claimed by the plaintiff in its supplemental complaint as erroneous assessments and collections of tax represent tax at 4¢ per share of \$1,400.00 on the forestated options or agreements to sell 35,000 shares of stock by plaintiff corporation, and the transfer by Paul Stock to plaintiff corporation of voting trust certificates representing 35,000 shares of the [76] capital stock of plaintiff corporation at 4¢ per share amounting to \$1,400.00.

XXI

That on or about January 11, 1936, the Commissioner of Internal Revenue assessed against the plaintiff documentary stamp taxes in the sum of \$2,800.00, which, together with interest thereon of \$175.81, was paid to the defendant as Collector of Internal Revenue on February 17, 1937.

XXII.

That on February 18, 1937, the plaintiff filed with the defendant as Collector of Internal Revenue a claim for refund of documentary stamp taxes and interest previously paid in the sum of \$2,975.81.

XXIII.

That thereafter, and on or about the 18th day of September, 1937, the Commissioner of Internal Revenue rejected plaintiff's claim for refund in the total amount of \$2,975.81.

XXIV.

That no part of said \$2,975.81 has been refunded to the plaintiff or anyone else.

CONCLUSIONS OF LAW

I.

That the tax assessed and collected in the sum of \$3,100.00 was legally assessed and collected and in strict accordance with Schedule A-3 of Title VIII of the Revenue Act of 1926.

II.

That the tax assessed and collected in the sum of \$50.00 was legally assessed and collected and in strict accordance with Schedule A-3 of Title VIII of the Revenue Act of 1926.

III.

That the tax assessed and collected in the sum of \$140.00 was legally assessed and collected and

in strict accordance with Schedule A-3 of Title VIII of the Revenue Act of 1926.

IV.

That the tax assessed and collected in the sum of \$60.00 was legally [77] assessed and collected and in strict accordance with Schedule A-3 of Title VIII of the Revenue Act of 1926.

V.

That the tax assessed and collected in the sum of \$2,408.91 was legally assessed and collected and in strict accordance with Schedule A-3 of Title VIII of the Revenue Act of 1926, as amended.

VI.

That the tax assessed and collected in the sum of \$65.60 was legally assessed and collected and in strict accordance with Schedule A-3 of Title VIII of the Revenue Act of 1926, as amended.

VII.

That the tax assessed and collected in the sum of \$1,400.00 was legally assessed and collected and in strict accordance with Schedule A-3 of Title VIII of the Revenue Act of 1926, as amended.

VIII.

That the tax assessed and collected in the sum of \$1,400.00 was legally assessed and collected and in strict accordance with Schedule A-3 of Title VIII of the Revenue Act of 1926, as amended.

IX.

That the defendant's motion for judgment must be sustained.

X.

That judgment must be entered in favor of the defendant and for his costs of suit herein.

Respectfully submitted,

CARL C. DONAUGH,

United States Attorney.

M. B. STRAYER,

Ass't United States Attorney.

THOMAS R. WINTER,

General Counsel Representative.

Filed June 6, 1938. G. H. Marsh, Clerk. By
E. W. Knowles, Deputy. [78]

[Title of District Court and Cause.]

MEMORANDUM OPINION

In disposing of this case, I will follow the headings as set out in defendant's brief, beginning at page 2:

“I

“Was there a tax of two cents per share on the transfer of the rights of various persons (subscribers for such shares) to receive 155,000 shares of stock within the meaning of Schedule A-3, Title VIII of the Revenue Act of 1926: Total tax—\$3100.00.”

In the Raybestos, Founders and other cases, there was an existing right to receive the stock, which was transferred either upon a consideration or by direction of the one owning the right. Such is not the present case. It, rather, is the creation of a trust. There was no transfer of a right to receive stock, because no such right was in existence. Compare the late case of *Corporation of America v. John P. McLaughlin, United States Collector*....., 9th Cir., decided November 22, 1938. Recovery is allowed.

“II

“Was there a tax of two cents for \$100.00 or fraction thereof of the par or face value of 249,996 shares of stock donated by C. R. Griffith to the plaintiff corporation within the meaning of Section 800, Schedule A-3, Title VIII, of the Revenue Act of 1926—total tax, \$50.00.”

What appears to have happened here is that the stockholder did not carry out the original plan of donation to the treasury of the corporation, but rather transferred the stock directly to the voting trustees. The basis of the tax is the erroneous assumption that the stock was actually donated [80] to the corporation (see testimony of Mr. Canneddy, p. 64 of Transcript). Since the corporation had the technical right to require that the mechanics provided in the original stock subscription be carried out, to-wit: donation to the treasury of the shares in question, then transfer by the corporation

to the voting trustees, rather than transfer direct by the subscriber to the voting trustees, as was done, I feel that the doctrine of the leading Supreme Court cases cited above justifies the tax. I note that refund was not claimed on the Casing Head and the Swift stock, where the same question was involved. Recovery denied.

“III

“Was there a tax of two cents per share on the transfer on the part of the plaintiff corporation of its RIGHT TO RECEIVE VOTING TRUST CERTIFICATES representing 7,000 shares of treasury stock deposited by the plaintiff corporation with the trustee within the meaning of Section 800, Schedule A-3, Title VIII, of the Revenue Act of 1926, total tax, \$140.00.

IV.

“Was there a tax of two cents per share on the transfer on the part of the plaintiff corporation of its RIGHT TO RECEIVE VOTING TRUST CERTIFICATES representing 3,000 shares of treasury stock deposited by the plaintiff corporation with the trustee within the meaning of Section 800, Schedule A-3, Title VIII, of the Revenue Act of 1926—total tax, \$60.00.

V.

“Was there a tax of two cents per \$100.00 or fraction thereof of the par value of the

shares and two cents per share of the no par value on the transfer on the part of the depositors of said stock of their RIGHTS TO RECEIVE VOTING TRUST CERTIFICATES representing shares of plaintiff corporation stock save and except the tax on the transfers conceded by plaintiff corporation in its complaint and exhibit attached thereto within the meaning of Section 800, Schedule A-3, Title VIII, of the Revenue Act of 1926—total tax, \$2,408.91.

VI.

“Was there a tax of four cents per share, no par value shares, on the transfer and the transfer on the part of depositors of said stock with the trustees of their RIGHT TO RECEIVE VOTING TRUST CERTIFICATES No. 409 to 417, inclusive, less \$140.00 tax on certificate No. 410, conceded by plaintiff corporation and \$106.00 paid by stamps purchased and affixed by plaintiff within the meaning of Section 800, Schedule A-3, Title VIII, of the Revenue Act of 1926 as amended by Section 722 (a) of the Revenue Act of 1932—total tax, \$65.60.” [81]

Paragraphs III, IV, V and VI above all raise the same question—whether the transfer of “the right to receive voting trust certificates” is taxable. As pointed out in the comment following paragraph VIII below, the transfer of voting trust certificates is taxable, because the trust certificates carry

the right to receive the stock at the end of the trust agreement, but I do not find either in the law or the regulations any authority for taxing a transfer of a "right to receive voting trust certificates." Compare the discussions re transfer of equitable rights in *Corporation of America v. John P. McLaughlin*, *supra*. Recovery allowed.

"VII

"Did the options embodied in the resolution of the Board of Directors of the plaintiff corporation on January 27, 1932, constitute agreements to sell stock within the meaning of Section 800, Schedule A-3, Title VIII, of the Revenue Act of 1926—total tax, \$1,400.00."

An option is a continuing offer and does not become an agreement to sell until the offer is accepted by exercise of the option. Options are of such general use and their meaning so well understood, Congress would, in my judgment, have used the word "options" in the taxing statutes, had it intended them to be taxable. The provisions of a taxing statute are not to be extended by implication beyond the clear import of the language used, and ambiguities are to be resolved in favor of the taxpayer. *White v. Aronson*, 302 U. S. 16, 20; *Corporation of America v. John P. McLaughlin*, *supra*. Recovery allowed.

“VIII

“Was there a tax of four cents per share on the transfer during 1935 by Paul Stock to plaintiff corporation of voting trust certificates representing 35,000 shares of the capital stock of plaintiff corporation within the meaning of Section 800, Schedule A-3, Title VIII, of the Revenue Act of 1926 as amended—total tax, \$1,400.”

As stated under III, IV, V and VI above, the transfer of voting trust certificates seems to me to be taxable, because with the certificates goes the right to receive the stock at the end of the trust. Thus a transfer [82] of the right to receive stock is involved. See also language in *Corporation of America v. John P. McLaughlin*, indicating that a transfer of voting trust certificates is a transfer of the right to receive profits. However, I find nothing in the record supporting defendant's claim that Paul Stock transferred voting trust certificates representing 35,000 shares of stock to the plaintiff corporation. Perhaps defendant's attorneys can point out the place in the record where this appears.

Dated at Portland, Oregon, November 29, 1938.

CLAUDE McCOLLOCH.

Filed November 29, 1938. G. H. Marsh, Clerk.
By R. DeMott, Deputy. [83]

[Title of District Court and Cause.]

SUPPLEMENTAL OPINION

“VIII.

“Was there a tax of four cents per share on the transfer during 1935 by Paul Stock to plaintiff corporation of voting trust certificates representing 35,000 shares of the capital stock of plaintiff corporation within the meaning of Section 800, Schedule A-3, Title VIII, of The Revenue Act of 1926 as amended—total tax, \$1,400.”

Following the earlier Memorandum Opinion, the Government has made a further showing in opposition to recovery under the above heading, and on that showing I hold with the Government.

Will the attorneys for the plaintiff please prepare Findings, Conclusions and form of Judgment in accordance with said earlier Opinion and with this Opinion, with service on the defendant's attorneys.

Dated at Portland, Oregon, December 30th, 1938.

CLAUDE McCOLLOCH

Judge

Filed December 30, 1938.

G. H. Marsh, Clerk.

By R. DeMott, Deputy. [85]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial in the above entitled Court before the Honorable Claude McColloch, without a jury, on Thursday, March 31, 1938; the plaintiffs appeared by their attorneys Griffiths, Peck & Coke, and the defendant appeared by his attorneys, Carl C. Donough, United States District Attorney and M. B. Strayer, Assistant United States Attorney, and Thomas R. Winter, special attorney, Bureau of Internal Revenue, and the Court having heard the evidence herein and the respective parties having submitted briefs in the above cause and the Court now being fully advised in the premises, makes the following:

FINDINGS OF FACT

I.

That at all times herein mentioned the above named plaintiff was a corporation organized and existing under and by virtue of the laws of the State of Oregon, having its principal place of business in Portland, Multnomah County, Oregon, and that said corporation was voluntarily dissolved by resolution as of December 24, 1935, and since said date, and at the present time, is engaged in the process of liquidation, the collection of its debts and distribution of assets to its stockholders. [87]

II.

That at all times herein mentioned, the above defendant was and now is the duly appointed, qualified and acting Collector of Internal Revenue for the District of Oregon having his office in the City of Portland, Multnomah County, Oregon.

III.

That on or about October of 1933, the Commissioner of Internal Revenue made and levied an assessment for documentary stamp taxes against the above plaintiff in the sum of \$9,772.29, together with a penalty of 5 per centum in the amount of \$488.61, together with interest thereon in the sum of \$123.42, making a total assessment of \$10,384.32, and thereafter on or about the 11th day of December, 1933, the above defendant gave notice of said assessment to the above plaintiff.

IV.

That on or about November, 1933, the Commissioner of Internal Revenue made an assessment against the above plaintiff on account of documentary stamp taxes in the sum of \$205.60 together with a penalty of 5 per centum in the sum of \$10.28, together with interest thereon in the sum of \$2.60, making a total assessment of \$218.48, together with an additional amount of interest in the sum of \$41.29, making a total assessment of \$259.77, and that the said defendant thereafter on or about the 11th day of December, 1933, gave notice of said assessment to the above plaintiff. [88]

V.

That thereafter the above defendant caused notice of tax lien, on account of said assessment, to be filed in Multnomah County, Oregon, Big Horn County, Wyoming, Park County, Wyoming, and Yellowstone County, Montana, the above plaintiff having property situated in said counties in Wyoming and Montana.

VI.

That on March 5, 1935, the plaintiff paid to the above defendant under protest the sum of \$1989.10 as documentary stamp taxes previously assessed by the Commissioner of Internal Revenue; that on or about November 2, 1935, the plaintiff paid to the above defendant under protest the sum of \$10,474.30, being the balance claimed to be due and owing for documentary stamp taxes, and that thereafter the above defendant caused the said liens hereinbefore referred to to be satisfied and discharged of record.

VII.

That on November 15, 1935, the plaintiff filed with the defendant, as Collector of Internal Revenue, a claim for refund of documentary stamp taxes, penalties and interest previously paid in the sum of \$10,298.18; that of the said amount claimed to be refundable the sum of \$8,124.51 represented stamp taxes previously assessed and paid, and \$2,173.67 thereof represented penalties and interest previously assessed and paid on said stamp taxes.

VIII.

That thereafter, and on or about the 18th day [89] of February, 1937, the Commissioner of Internal Revenue of the United States authorized a refund upon said claim for refund in the amount of \$2,950.90, and rejected plaintiff's claim for refund in the sum of \$7,347.28; that thereafter, and on or about the 2nd day of March, 1937, the above defendant, in accordance with said ruling of the Commissioner upon said claim for refund, paid to the above plaintiff, as a refund, the sum of \$2,950.90, which represented a refund of documentary stamp taxes previously assessed by the Commissioner in the sum of \$2300.00, which was paid by the plaintiff, and \$650.90 represented the refund of penalties and interest previously assessed by the Commissioner and paid by the plaintiff.

IX.

That prior to filing complaint herein more than six months elapsed since the date of the filing of said claim for refund, and that the Commissioner of Internal Revenue, on or about February 18, 1937, notified the above plaintiff by letter that said claim for refund had been rejected in the amount of \$7,347.28.

X.

That on or about January 11, 1936, the Commissioner of Internal Revenue made and levied an assessment for documentary stamp taxes against the

above plaintiff in the sum of \$2800.00, and thereafter, and on or about January 22, 1936, the above defendant made demand upon the above plaintiff for the payment of said tax, together with penalties and interest thereon and thereafter and on or about the 8th day of February subsequent notice and demand was given by said defendant [90] to the above plaintiff and pursuant thereto and on February 16, 1937, the above plaintiff paid to the above defendant, under protest, the sum of \$2800.00, together with penalty and interest thereon in the sum of \$175.81 or a total payment of \$2,975.81 on account of said documentary stamp taxes.

XI.

That thereafter and on or about February 17, 1937, the above plaintiff filed with the above defendant its claim for refund in the sum of \$2,975.81, including \$2800.00 documentary stamp taxes and \$175.81 interest and penalties and claimed a refund in the total amount of \$2,975.81.

XII.

That thereafter and on or about the 18th day of September, 1937, the Commissioner of Internal Revenue of the United States, rejected plaintiff's claim for refund in the total amount of \$2,975.81.

XIII.

That prior to filing complaint herein more than six months elapsed since the date of the filing of

said claim for refund and that the said claim for refund has now been rejected in the total amount.

XIV.

That on April 6, 1931, plaintiff corporation was organized under the laws of the State of Oregon, with an authorized capital stock of 350,000 shares, having a par value of \$1.00 per share; that on May 1, 1931 subscriptions were made to said capital stock as shown by the minute records of said corporation, in words [91] and figures as follows:

“C. R. Griffith does hereby subscribe for 349,996 shares of the par value of \$1.00 per share aggregating \$349,996.00 of Portland Associates, Inc., an Oregon corporation, and agrees to pay for the same by transferring and assigning to the corporation that certain indenture of lease entered into under day of March 13th, 1931, by and between Montana and Wyoming Oil Company as lessor and C. R. Griffith trustee, as lessee, covering the following described real property in the county of Big Horn and State of Wyoming:

The southwest (SW) quarter of the southeast (SE) quarter and the southeast (SE) quarter of the southwest (SW) quarter of section 28 in township 56 north of range 97 west of the sixth principal meridian, containing 80 acres more or less.

and by transferring and delivering to the corporation that certain drilling contract dated April 16th, 1931 and secured by said trustee and his associates for this corporation from Paul Stock of Cody, Wyoming as driller.

“The undersigned agrees that if this conditional subscription is accepted that he will donate 249,996 shares of said capital stock to the corporation for sale by it upon such terms and conditions as it may desire to sell the same or for use by it in any manner it desires, subject however to a voting trust agreement to be executed prior to the time said stock is delivered to this corporation. In the event this conditional subscription is accepted the undersigned directs that 60,000 shares of said stock be issued to Casing-Head Gas & Oil Co., that 15,000 shares of said stock be issued to M. F. Swift, that 25,000 shares of said stock be issued to C. R. Griffith, and that the remaining 249,996 shares be issued to the Secretary of Portland Associates, Inc. in trust for said corporation and such distribution as may from time to time be determined upon by the directors of said Portland Associates, Inc.

C. R. GRIFFITH

“We, the undersigned, do hereby subscribe for the number of shares of capital stock of Portland Associates, Inc. set after our names

and agree to pay therefor at the rate of \$1.00 per share upon call of said subscription.

| Name | Number of Shares |
|----------------------|------------------|
| Franklin T. Griffith | One |
| N. F. Swift | One |
| E. W. Battleson | One |
| S. M. Mears | One [92] |

XV.

That the stockholders of said corporation accepted the offer of C. R. Griffith at a meeting of stockholders held May 1, 1931, and the directors of said corporation accepted said offer at a directors' meeting held May 1, 1931.

XVI.

That certificate of stock No. 1 was issued to C. R. Griffith for 349,996 shares, and that certificates Nos. 2, 3, 4 and 5 were issued to Franklin T. Griffith, S. M. Mears, E. W. Battleson and M. F. Swift for one share each, and that a documentary stamp tax was paid on the issuance of said certificates in the amount of \$175.20; thereafter certificate No. 1 was endorsed and transferred by C. R. Griffith to Franklin T. Griffith, C. R. Griffith and E. M. Steell, Trustees, transferring to said Trustees 349,995 shares, and certificate No. 6 for said number of shares was issued to said Trustees and a transfer tax in the amount of \$70.00 was paid thereon; that certificate No. 8 was a void certificate used as a

specimen only; that certificate No. 9 was issued to Paul Stock for one share and certificate No. 10 was issued to H. K. Senor for one share, being transfers from the Trustees and a documentary stamp tax paid on such transfers in the sum of 4 cents.

XVII.

That a stamp tax was paid in the amount of \$3.00 on the authorization of C. R. Griffith to transfer 15,000 shares to M. F. Swift, and that a documentary [93] stamp tax of \$12.00 was assessed and paid on the authorization to transfer 60,000 shares to Casing-Head Gas & Oil Company.

XVIII.

That there was no transfer of stock from C. R. Griffith to Portland Associates, Inc. or to the treasury of said corporation, or to any one as an officer of said corporation.

XIX.

That on October 1, 1931 the Articles of Incorporation of the plaintiff were amended, changing and increasing the authorized capital stock of said corporation from 350,000 shares of the par value of \$1.00 each, to 750,000 shares without par value, and there were issued one share of no par value for each share of \$1.00 par value stock then outstanding.

XX.

That there was issued to Franklin T. Griffith, C. R. Griffith and E. M. Stell, as Trustees, certificate

No. 7 representing 505,000 shares of the capital stock, which included 349,995 shares transferred to the Trustees above named by stock certificate No. 6 dated September 22, 1931, and the additional 155,005 shares were issued in addition thereto under authorization of the directors and stockholders of the corporation.

XXI.

That an original issue documentary stamp tax was paid upon said 155,000 shares in the sum of \$77.50; that there was no transfer to the Trustees as shown by the records of said corporation other than the issuance [94] of said certificate above mentioned.

XXII.

That the original subscription of C. R. Griffith for 349,996 shares of the capital stock of said corporation was conditioned upon the creation of a voting trust, and a voting trust agreement was made and entered into as of May 1, 1933 between all of the stockholders of Portland Associates, Inc. and Franklin T. Griffith, C. R. Griffith and E. M. Steell as voting trustees, and that all of the stock of said corporation (except directors' qualifying shares) was held under the terms of said voting trust agreement, and that the Title and Trust Company, Portland, Oregon, acted as depositary under said agreement, and acted as agent of the voting trustees; that the voting trustees sold voting trust certificates to various individuals and received the money therefor and paid the same into the treasury

of the corporation, and the voting trustees caused to be issued to the purchasers of said certificates voting trust certificates; that the above plaintiff, Portland Associates Inc., was not a party to said voting trust agreement, and the above plaintiff corporation, did not issue or cause to be issued any of the voting trust certificates, and that said voting trust agreement was made for the benefit of the stockholders of said corporation, and that said voting trust agreement expressly provided that the entire outstanding capital stock of Portland Associates, except directors' qualifying shares, has been acquired and transferred to the Trustees upon the express understanding and agreement that all of said shares of [95] stock will be assigned and delivered to the Trustees, the said Trustees to hold and exercise the rights appertaining thereto under the terms of said agreement.

XXIII.

That no stock certificates have been issued by the above plaintiff corporation except stock certificates to the said voting trustees and directors' qualifying shares of one share each to each of the directors of said corporation; except as herein otherwise specifically found and declared no person had any right to receive shares of stock in the above plaintiff corporation or certificates representing shares of stock issued by the above plaintiff corporation except said voting trustees and the directors qualifying, one share each.

XXIV.

That among other things there was assessed, levied against and collected from the above plaintiff a documentary stamp tax in the sum of \$3100.00 as a transfer tax upon 155,000 shares of stock; that the records of said corporation do not show any transfer of 155,000 shares of the capital stock upon which such tax can be assessed, levied or collected.

XXV.

That among other things there was assessed, levied against and collected from the above plaintiff the sum of \$50.00 documentary stamp tax on a transfer of stock from C. R. Griffith to the treasury of said corporation; that the records of said corporation do not show any transfer upon which such tax can be assessed, levied or collected, but since the corporation had the [96] technical right to require that the mechanics provided in the original stock subscription be carried out, to-wit: Donation to the treasury of the shares in question, then transfer by the Corporation to the Voting Trustees, rather than transfer direct by the subscriber to the voting trustees, justifies the tax, and the tax was therefore legally assessed, levied and collected in the amount of Fifty (\$50.00) Dollars upon such transfer.

XXVI.

That among other things there was assessed, levied against and collected from the above plaintiff a documentary stamp tax in the sum of \$140.00

on purported transfers as of June 20, 1932; that the records of said corporation do not disclose any transfer of capital stock as of June 20, 1932 upon which said tax could be levied, assessed or collected.

XXVII.

That among other things there has been assessed and levied against and collected from said plaintiff corporation the sum of \$120.00 upon a purported transfer subsequent to June 21, 1932, and that a refund has been made thereon in the sum of \$60.00, leaving an assessment and collection on account thereof in the sum of \$60.00; that the records of said corporation do not disclose any such transfer of capital stock upon which a documentary stamp tax could be assessed, levied or collected.

XXVIII.

That there has been assessed, levied against and collected from said corporation documentary stamp taxes on purported transfers of voting trust certificates including a transfer tax on all of the voting trust [97] certificates and that there was no transfer of certificates or of the right to receive by the above plaintiff corporation upon said voting trust certificates listed in the voting trust certificate books as original issues upon which a tax could be assessed, levied or collected, and that said voting trust certificates are as follows:

1 to 38, inclusive, 41, 42, 46 to 52, inclusive, 54 to 66, inclusive, 68 to 118, inclusive, 127, 129, 157, 158, 204 to 208, inclusive, 222, 223, 233 to

236, inclusive, 244 to 247, inclusive, 276 to 284, inclusive, 290, 294 to 334, inclusive, 339 to 342, inclusive, 359, 360, 361, 374, 411 to 416, inclusive.

XXIX.

That documentary stamp tax on transfer was assessed and levied against and collected from the above corporation 'on certain voting trust certificates; that the records of said corporation show that there was no transfer of said certificates, which are numbered as follows:

228, 409 and 417.

XXX.

That the minute records of the plaintiff corporation show that at an adjourned meeting of the Board of Directors held January 27, 1932, resolutions were adopted as follows:

RESOLVED that this corporation purchase all of the capital stock of Big Horn Oil & Refining Company, a corporation duly incorporated under the laws of the State of Montana, in accordance with the proposition which has been submitted to this corporation by Mr. Paul Stock, representing the owners of all of the issued and outstanding stock of said Big Horn Oil & Refining Company, and in payment therefor issue 95,000 shares of the capital stock of this corporation as follows:

| | |
|--------------------|---------------|
| To Jeff Tingle | 2,000 shares |
| E. J. Fleming | 10,000 shares |
| Mrs. E. E. Fleming | 2,000 shares |
| T. R. Graham | 1,000 shares |
| | [98] |
| J. E. Simon | 500 shares |
| R. J. O'Malley | 2,000 shares |
| J. G. Everett | 19,000 shares |
| G. H. Downs | 1,000 shares |
| Paul Stock | 57,500 shares |

BE IT FURTHER RESOLVED that in consideration of Mr. Paul Stock's assuming and agreeing to pay or cancel the following indebtedness of said Big Horn Oil & Refining Company as shown by the audit of the books of said company of December 31, 1931, to-wit:

| | |
|---|------------|
| Paul Stock | \$3,929.45 |
| E. J. Fleming | 3,500.00 |
| J. G. Everett, representing the claim of Associated Independent Dealers | 1,331.72 |
| J. G. Everett | 1,000.00 |

this corporation hereby grants to said Paul Stock the option to purchase 15,000 shares of the capital stock of this corporation at \$1.00 per share at any time prior to July 31, 1932."

"RESOLVED that in consideration of his lending this corporation the sum of \$10,000, Mr. E. W. Battleson be and he hereby is granted an option to purchase 10,000 shares of the

capital stock of this corporation at any time prior to July 31, 1932, at the price of \$1.00 per share.”

“RESOLVED that in consideration of his lending this corporation the sum of \$10,000, Mr. Franklin T. Griffith be and he hereby is granted an option to purchase 10,000 shares of the capital stock of this corporation at any time prior to July 31, 1932, at the price of \$1.00 per share.”

that no option agreements were made in writing between the corporation and the respective parties mentioned in said resolution; that no money was ever paid by any of the persons mentioned in said resolutions for the purchase of any stock as mentioned in said purported options, and that no stock was ever issued by the above plaintiff corporation to any of said persons on account of said purported options, and that none of said persons ever received any such stock and did not have the right to [99] receive such stock unless and until they should pay the money therefor; that there was no issuance or transfer of any stock in said corporation to any of said persons which was subject to documentary stamp tax either for issuance or transfer on account of the recitations in said minutes. The defendant has admitted by stipulation in Court that the plaintiff is entitled to at least the sum of Seven Hundred (\$700.00) Dollars on this item and the court finds that the plaintiff is entitled to a total amount of Fourteen Hundred (\$1400.00) Dollars.

XXXI.

That there is competent evidence to show that voting trust certificates representing 35,000 shares of capital stock of the plaintiff corporation was assigned, transferred and delivered by Paul Stock to the Corporation and that the transfer thereof was taxable in the amount of \$1400.00.

CONCLUSIONS OF LAW

I.

That the tax assessed and collected in the sum of \$3100.00 on 155,000 shares was unlawfully and erroneously assessed and collected, and that the plaintiff is entitled to a refund thereof, together with interest and penalties levied and collected in addition thereto.

II.

That the tax assessed and collected in the sum of \$50.00 on 249,996 shares of stock was lawfully assessed and collected and that the plaintiff is not [100] entitled to recover the said \$50.00, or any interest or penalties collected in addition thereto.

III.

That the tax assessed and collected in the sum of \$140.00 on 7000 shares was assessed and collected unlawfully and erroneously, and that the plaintiff is entitled to recover said \$140.00, together with interest and penalties assessed and collected in addition thereto.

IV.

That the tax assessed and collected in the sum of \$60.00 on 3000 shares was assessed and collected unlawfully and erroneously, and that the plaintiff is entitled to recover said \$60.00, together with any penalties and interest assessed and collected in addition thereto.

V.

That the tax assessed and collected in the sum of \$2,408.91 on original issues of voting trust certificates was assessed and collected unlawfully and erroneously, and that the plaintiff is entitled to recover said sum, together with any and all penalties and interest assessed and collected in addition thereto.

VI.

That the tax assessed and collected in the sum of \$65.60 on voting trust certificates was unlawfully and erroneously assessed and collected, and that the plaintiff is entitled to recover the said sum of \$65.60 together with any and all penalties and interest assessed and collected in addition thereto.

[101]

VII.

That the resolutions of the Board of Directors adopted January 27, 1932, referring to certain options, do not constitute taxable transfers under Schedule A-3 of Title VIII of the Revenue Act of 1926, and that the tax assessed and collected in the sum of \$1400.00 thereon was unlawfully and erro-

neously assessed and collected, and that the plaintiff is entitled to recover said \$1400.00, together with any and all penalties and interest assessed and collected in addition thereto.

VIII.

That the tax assessed and collected in the sum of \$1400.00 on transfer of voting trust certificates by Paul Stock was lawfully assessed and collected, and that the plaintiff is not entitled to recover said sum of \$1400.00 or any penalties or interest assessed and collected in addition thereto.

IX.

That plaintiff is entitled to a judgment against the above defendant upon its original complaint in the sum of \$7,282.48, together with interest thereon at the rate of 6 per cent. per annum from November 2, 1935, and upon its supplemental complaint for a judgment against the defendant in the sum of \$1487.90, together with interest thereon at the rate of 6 per cent. per annum from February 16, 1937, together with plaintiff's costs and disbursements in this action.

Dated at Portland, Oregon, this 7th day of January, 1939.

CLAUDE McCOLLOCH

Judge

Filed January 7, 1939.

G. H. Marsh, Clerk.

By R. DeMott, Deputy. [102]

In the District Court of the United States
for the District of Oregon

No. L-12934

PORTLAND ASSOCIATES, INC., a corporation,
Plaintiff,

vs.

J. W. MALONEY, Collector of Internal Revenue,
Portland, Oregon,

Defendant.

JUDGMENT

The above entitled cause came on regularly for trial in the above entitled Court, the Honorable Claude McColloch, Judge, presiding, on Thursday, March 31, 1938, and the parties agreeing that the cause may be tried without a Jury, the plaintiff appearing by its attorneys, Griffith, Peck & Coke and Clarence D. Phillips, and the defendant appearing by his attorneys, Carl C. Donough, United States District Attorney and M. B. Strayer, assistant United States Attorney and Thomas R. Winter, special attorney, Bureau of Internal Revenue, and the Court having heard the evidence submitted and the parties hereto having filed briefs herein, and the plaintiff having moved for judgment in its favor herein, and the Court having taken the cause under consideration, and the Court having heretofore made and entered its findings of fact and conclusions of law herein, and the Court having examined the rec-

ords and files herein and now being fully advised in the premises, and based upon said findings of fact and conclusions of law, [104]

It is therefore considered, ordered and adjudged that the above entitled plaintiff have and recover of and from the above defendant the sum of Seven Thousand Two Hundred Eighty-two and 48/100 (\$7,282.48) Dollars, together with interest thereon at the rate of 6% per annum from November 2, 1935, on the cause of action set forth in plaintiff's original complaint and that the plaintiff have and recover of and from the above defendant the further sum of One Thousand Four Hundred and Seven and 90/100 (\$1,407.90) Dollars, together with interest thereon at the rate of 6% per annum from February 16, 1937, upon the cause of action set forth in plaintiff's supplemental complaint, together with plaintiff's costs and disbursements herein taxed at \$31.06.

Dated at Portland, Oregon, this 7th day of January, 1939.

CLAUDE McCOLLOCH

Judge

Filed January 7, 1939.

G. H. Marsh, Clerk.

By R. DeMott, Deputy. [105]

[Title of District Court and Cause.]

CERTIFICATE

I, Claude McColloch, being a Judge of the United States District Court for the District of Oregon, do hereby certify that I presided at the trial of the action of Portland Associates, Inc. vs. J. W. Maloney, Collector of Internal Revenue, Portland, Oregon, wherein the plaintiff sought to recover a sum of money theretofore paid under protest to the defendant as Collector of Internal Revenue for the District of Oregon, for documentary stamp taxes.

I further certify that it is my belief that the sums of money involved in said action, for which judgment was subsequently, on the 7th day of January, 1939, entered in favor of the plaintiff, were exacted from the plaintiff by the defendant, J. W. Maloney, Collector of Internal Revenue for the District of Oregon, in the performance of his official duty and there was, in my opinion, probable cause for the act done by said Collector of Internal Revenue and the same was done under the direction of the Secretary of the Treasury.

Dated at Portland, Oregon, this 25th day of January, 1939.

CLAUDE McCOLLOCH

District Judge

Filed January 25, 1939.

G. H. Marsh, Clerk.

By R. DeMott, Deputy. [107]

[Title of District Court and Cause.]

Be it remembered that the above entitled cause was heard before the Honorable Claude McColloch, Judge of the above entitled Court, without a jury, beginning Thursday, March 31, 1938, at 10:10 o'clock A. M.

Appearances:

Messrs. Griffith, Peck & Coke, by Mr. Clarence O. Phillips, attorneys for plaintiff.

Mr. Thomas R. Winter, Special Attorney, Bureau of Internal Revenue, and Mr. M. B. Strayer, Assistant United States Attorney, attorneys for defendant.

After opening statements were made in behalf of the respective parties, evidence was given and proceedings were had as follows: [122]

Mr. Phillips: Call Mr. Griffith, please.

FRANKLIN T. GRIFFITH

was thereupon produced as a witness in behalf of the plaintiff and, after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phillips:

Q. Your name is Franklin T. Griffith?

A. Yes.

Q. And what is your occupation?

A. I am a public utility executive and, by courtesy, I am head of the law firm of Griffith, Peck &

(Testimony of Franklin T. Griffith.)

Coke.

Q. You are admitted to practice law?

A. Yes.

Q. And how long have you been admitted in Oregon?

A. Forty-four years.

Q. Now, were you one of the original subscribers to the Portland Associates, Inc., a corporation?

A. Yes, sir.

Q. I will hand you what purports to be the minute book of the corporation and ask you to examine that and tell the Court what it is.

A. This is the minute book of that corporation.

Mr. Winter: I think we can stipulate that that is the minute book of the Portland Associates, Inc.

Mr. Phillips: We will stipulate that, and it may be received [123] in evidence?

Mr. Winter: It may be received in evidence.

Mr. Phillips: And what about the stock books?

That is, the stock books of the corporation, not the voting trust.

Mr. Winter: Yes. The same stipulation as to the stock books.

Mr. Phillips: We will offer the minute book and the two original stock books of the corporation in evidence.

(The minute book and two original stock books of Portland Associates, Inc., so offered were received in evidence and

(Testimony of Franklin T. Griffith.)

marked Plaintiff's Exhibits Nos. 1, 2, and 3, respectively.)

Mr. Phillips: And what about the voting trust agreement?

Mr. Winter: I haven't seen it before. I assume it is the same as the copy on that stipulation?

Mr. Phillips: Yes, it is the same.

Mr. Winter: No objection.

Mr. Phillips: We offer the voting trust agreement in evidence.

(The voting trust agreement of Portland Associates, Inc., so offered, was received in evidence and marked Plaintiff's Exhibit No. 4.)

Mr. Phillips: Q. Now, Mr. Griffith, who were the other organizers of this corporation?

A. M. F. Swift, who was associated with my brother in the preliminary negotiations for the acquisition of the lease; E. W. [124] Battleson, and S. M. Mears, as I recall it. The minutes will show that.

Q. Well, your brother, C. R. Griffith, subscribed for the bulk of the shares originally?

A. He subscribed for all except the directors' qualifying shares. The original incorporation was 350,000 shares of one dollar par, and my brother Charles subscribed for all but five shares of stock, which were subscribed by the other four associates.

(Testimony of Franklin T. Griffith.)

Q. And the two stock certificate books which are in evidence, do they show all issues and transfers of stock of the corporation?

A. There are no other books except those.

Mr. Winter: Now, if the Court please, that is a conclusion. The books speak for themselves.

Mr. Phillips: Q. Yes, but I mean are there any other stock books of this corporation any other place?

A. That is what I answered you. There are no other stock books.

Q. No other stock books. Now, the voting trust agreement is in evidence. Will you tell the Court what the purpose was in creating a voting trust agreement?

A. The purpose was simply the continuity of control and management in a highly hazardous venture. I didn't want to go into it. I think I was probably responsible for having that voting trust created; because I wanted to have some control over the venture. It was my brother's finding, and from the beginning I was expected to put up a considerable sum of money, which I did.

Q. What sort of a venture was this corporation going into? [125]

A. The production of oil and the refining of that oil.

Q. At the time of the formation of the corporation had they completed the well?

(Testimony of Franklin T. Griffith.)

A. No. At the time of the formation of the corporation the 80 acres were under lease to the Casing-Head Gas & Oil Company, a Montana corporation, and they had drilled a hole about seven hundred feet down. My brother was very much enamored of the enterprise; he thought there was a great field to be discovered there, and he wanted to get this lease. He did secure an option from the Casing-Head Company, paid them some money, spent quite a bit of time up there investigating it himself and also in employing some experts and geologists who gave him their opinion about it, so that when he made his deal finally he agreed that the Casing-Head Oil Company in consideration of the cancellation of their lease so that the owners of the land might make a direct lease to the Portland Associates, or rather to my brother at that time, that he would give them sixty thousand shares of this original issue of Portland Associates. Swift himself, having been a partner with my brother in working up the whole deal, was to be allocated 15,000 shares, and Charlie wanted to keep 25,000 shares himself. The estimated value of the property was sufficient to justify paying all of the stock for the leases. The remaining two hundred forty-nine thousand odd shares we agreed that he would turn back to the corporation in trust as treasury stock to be sold for the pur- [126] pose of carrying on the drilling of the well and the purchase of the

(Testimony of Franklin T. Griffith.)

refinery. Those shares were all transferred and the entire issue except the qualifying shares were transferred under the voting trust agreement and also the subscription to the stock which is in the minute book to the three voting trustees I have just described. They were originally C. R. Griffith, E. M. Steell, and myself. By death they were changed somewhat, so that in the final formation of the voting trust I think that the three voting trustees were Battleson, F. T. Griffith and Henry Waetchter. All of the stock, or interest in the stock of the corporation, was taken by the various men who were voting trustees as well as original incorporators, by purchasing directly from the voting trustees the quantity of stock that they had agreed upon. I purchased quite a lot of it myself, and received voting trust certificates for it. To my knowledge there have never been any shares of the capital stock itself issued except the voting trust that was created, other than the voting trustees; even since the expiration of the voting trust there has been no surrender of voting trust certificates and a demand for the original stock.

Q. You were not president of the Portland Associates, Inc., at the time of the formation of it?

A. My brother died in May, 1932, and thereafter I became president.

Q. Was he president? [127]

A. He had been president up to that time.

(Testimony of Franklin T. Griffith.)

Q. Yes, and up to the time of his death he was president? A. Yes.

Q. Since the time of his death you have been president of the corporation? A. Yes.

Q. Now, what mechanics were used in the sale of voting trust certificates after the creation of the voting trust?

A. The directors of the corporation from time to time specified the price at which the stock might be sold. When it was treasury stock or par value stock they had the right to do that in much the same manner they had afterwards when it became no par value stock. That was a mistake, of course, in converting the par value stock to no par value stock, because I suppose the directors weren't able to see quite far enough ahead to see what Congress was going to do in the matter of assessments on such stock. That is our idea. Otherwise there wouldn't be enough involved in this controversy to be worth while taking up the time of the Court. The principle of the thing would be exactly the same, but the amount wouldn't be sufficient to carry on all this turmoil.

Q. Did the corporation itself have any control or anything to do with the actual issuance of voting trust certificates?

Mr. Winter: Oh, if the Court please, the trust agreement is in evidence and is the best evidence of that fact. What [128] authorities they had to

(Testimony of Franklin T. Griffith.)

issue stock or what authorities they had to sell stock or anything of that nature.

Mr. Phillips: I will withdraw the question.

The Court: Now, Mr. Phillips, the way Mr. Winter and I try these cases, he is very aggressive, as you can see, and he makes his objections and then I let everything in subject to the objection, and then I decide at the end whether he is right or I am, so we will just move along now with that working understanding.

Mr. Phillips: All right, your Honor.

Q. Well, did the corporation have anything to do with the actual issuance of voting trust certificates?

A. The directors of the corporation, as I say, fixed a price at which the stock might be sold. The voting trust agreement, as Mr. Winter properly says, declares what shall be done with the stock. All stocks were sold by agents of the voting trust certificates—of the voting trust, and the voting trustees authorized the issuance of voting trust certificates, provided the sale be made in accordance with the specifications made by the directors of the corporation.

Q. And who was the agent of the voting trustees for the purpose of issuing trust certificates?

A. Title & Trust Company.

Q. Title & Trust Company. They kept the books down there and issued the certificates?

(Testimony of Franklin T. Griffith.)

A. Altogether. [129]

Q. Now, at the time the——well, first let me ask you, was the capital increased of the corporation?

A. Yes, increased from three hundred fifty thousand shares of one dollar par value stock to seven hundred fifty thousand shares of no par value stock.

Q. That is shown in the minutes?

A. Yes.

Q. Now, at the time of the increase in capital stock how many additional shares were issued to the voting trustees? A. 155,000.

Q. And were the voting trustees authorized to sell that stock and issue voting trust certificates for it?

A. They were. The minutes will disclose that.

Q. And did you follow the same procedure on that additional 155,000 shares which were issued with respect to the previous trust certificates?

A. In the matter of authorizing the Title & Trust Company to issue them?

Q. Yes. A. Yes.

Q. Now, on the question of these options, in the minutes in January of 1931, the minute book, there is shown——

A. '32, isn't it?

Q. '32, January, 1932, there is shown three resolutions there relative to extending or granting of options to Mr. Stock and [130] Mr. Battleson

(Testimony of Franklin T. Griffith.)

and yourself. Were any of those options ever taken up by any of those individuals?

A. No.

Q. Was there ever any money paid by any of those individuals on account of the stock covered by those options? A. No.

Q. And was there ever any stock or voting trust certificates issued by reason of those options?

A. Not at all. The options were——

Mr. Winter: If the Court please, the options are right in evidence. I submit that that is a matter that should be testified, not from memory of what they provide, but what they actually are.

The Witness: I can read from the book, but I can do it just as well by repeating it.

Mr. Winter: I have no objection to him reading the options into the record from the——

Mr. Phillips: Q. Was there ever any acceptance by any of the individuals, either Mr. Battleson or Mr. Stock or yourself, of the option as shown in the minutes? A. No.

Q. No acceptance of any kind?

A. May I supplement that answer? The corporation needed more capital. The enterprise had cost up to that time considerably more than the original forecast, as almost invariably happens [131] in such a venture. We had considerably over a hundred thousand dollars in a well that was going to be drilled originally for seventy-five, and Battleson and I were rather large stockholders.

(Testimony of Franklin T. Griffith.)

We were willing to loan money then, but we weren't willing to buy more stock. The last stock we had bought prior to that was paid for at one dollar a share. We knew that if the corporation was to proceed it would need more money. We loaned money to the corporation, each of us, \$10,000, in addition to our other stock holdings. Then we had this in mind, that if we were coming in as a rescue party at that particular stage of the development and lending money to the corporation when it was far more uncertain as to what would be found or whether anything would be found, that we ought to have the right to buy more stock if we succeeded in bringing in a well by the first day of July, 1932, at the maximum price of one dollar per share, which was more than anybody had paid for the stock that I know about except myself, and the option was put into the minutes at that time, that the directors would, if the——

Q. And the loans that were made to the corporation, they have subsequently been repaid in cash by the corporation?

A. Well, we got back our loans, but we haven't gotten back our stock investment by any means.

Q. That is, there is no part of these loans that was ever applied upon the purchase price of any of this stock or trust certificates mentioned in the option? [132]

A. Oh, no.

Q. That was repaid to you in cash?

A. Yes, after the well was sold.

(Testimony of Franklin T. Griffith.)

Q. In each instance? A. Yes.

Q. Now the subsequent——

A. There were additional loans as well as those, that original ten thousand.

Q. Yes. The subsequent history of the corporation which may or may not be of interest to the Court, is the corporation still in existence as such?

A. Yes. It is just in existence only for the purpose of clearing up its affairs.

Q. Has it been dissolved as a corporation?

A. It has been dissolved and is operating today solely for the purpose of collecting what we can get from the United States Government in this outrageous tax that we are contesting at this moment and then distributing to the stockholders, who are in grave need of it.

Mr. Winter: We will ask that the witness' statement of an outrageous tax be stricken as a conclusion and prior to the determination of this case. That is one of the questions that is involved here.

Mr. Phillips: I think you may cross examine.

[133]

Cross Examination by Mr. Winter:

Q. I think you have stated, Mr. Griffith, that the corporation was organized in April, 1931, with an authorized capital stock of \$350,000?

A. I said it was organized at \$350,000, but I didn't say when it was organized.

Q. Was it organized in about April, 1931?

(Testimony of Franklin T. Griffith.)

A. I think so. The minutes are the best evidence.

Q. The minutes will show that. And on May 1st, 1931, your brother, C. R. Griffith, and four others—were you one of the subscribers?

A. Yes.

Q. Is it not a fact that Mr. Griffith, C. R. Griffith, your brother, and you and three others subscribed for all the stock of the corporation by assigning the oil and gas lease on 80 acres of land in Big Horn County?

A. No. My brother subscribed for all but four shares, I think, but the four shares subscribed for by the other four were paid for at one dollar apiece.

Q. A dollar apiece. The other four subscribers were one share each? A. One share each.

Q. And your brother, C. R. Griffith, by his subscription, which is on page 5 of Plaintiff's Exhibit 3, sets forth the subscription [134]

A. Yes. It is there.

Q. Yes.

Mr. Winter: You can check this with me, Mr. Phillips.

Mr. Phillips: That is all right, I know it by heart.

Mr. Winter: Q. Now, as a condition for the subscription your brother agreed to donate back to the corporation 349,996 shares of the capital stock so subscribed and paid for, did he not?

(Testimony of Franklin T. Griffith.)

A. Not just that way, Mr. Winter. What he said was that if the voting trust agreement was approved that he would donate 349,000 shares that he sold to the voting trustees for the benefit of the corporation. I think that is the substance of it.

Q. Of course, the subscription itself will show the basis upon which he subscribed for that stock?

A. Yes. The record is there and it will show, as you say.

Q. Now, the succeeding page, the acceptance of the subscription by the corporation, apparently by the corporation, is found on page 11 of the minutes.

A. Well, I can't say about that. I don't know what page it is on, but the acceptance is there somewhere.

Q. Now, there was issued to Mr. Griffith, C. R. Griffith, stock certificate No. 1, par value shares of stock, in the amount of 349,996 shares, was there not? A. I think so.

Q. And there was issued to you and the other three subscribers [135] one share?

A. Yes, sir.

Q. Certificate No. 1 further shows, does it not, that your brother, C. R. Griffith, assigned and transferred that certificate in blank to the trustees, he assigned it to the trustees?

A. The assignment would be the best evidence of that. I don't remember just how it was worded. You have it here.

(Testimony of Franklin T. Griffith.)

Q. Yes. And then later that certificate was surrendered and canceled when the certificate No. 6 of 505,000—no, and 349,000—no, and certificate No. 6—will you just look at the record?

A. I have it.

Q. Now, certificate No. 6 dated September 2nd, 1931, was issued by the plaintiff corporation to the voting trustees transferring 349,995 of such shares?

A. That is correct.

Q. Then subsequent to the changing or the amending of the Articles of Incorporation of the plaintiff corporation from 350,000 of one dollar par shares to 750,000 shares without par, certificate No. 7 for 505,000 shares, which includes the 349,995 and the 155,000 shares here in issue, that that certificate was issued to the voting trustees?

A. The minute book shows certificate No. 7, 505,000 shares issued to Franklin Griffith, C. R. Griffith and H. F. Waechter [136] as trustees, April the 5th, 1932.

Q. April 5th, 1932. Now, that included the 349,995 shares originally issued to your brother, C. R. Griffith, and 155,000 shares thereafter subscribed for of the new stock, the new non par stock?

A. Yes, that is correct, except that—

Mr. Phillips: Just a minute. Don't you mean the 349,000 originally issued on certificate No. 6 to the trustees?

Mr. Winter: Yes.

(Testimony of Franklin T. Griffith.)

Mr. Phillips: That is what you mean?

Mr. Winter: Yes.

Mr. Phillips: That is what I thought.

The Witness: Certificate No. 6 to the three voting trustees was for all of the stock except the qualifying share of the directors while it was still a par value stock.

Mr. Winter: Q. Yes. Well, the certificate No. 7 for 505,000 shares was in lieu of the certificate of 349,995 and the 155,000 new shares?

A. Let me say it in this way: The 349,000 shares certificate issued to the trustees of par value stock was surrendered and new no par value stock issued in lieu of it, together with 115,000 additional shares of no par value stock, which makes up the 505,000 shares of no par value stock then vested in the voting trustees.

Q. Yes. When the stock in the plaintiff corporation was— [137] when the Articles of the plaintiff corporation were amended increasing the number of shares, all the increased shares had to be subscribed for, didn't they, the 155,000?

A. No, they wouldn't have to be subscribed for. They were authorized for issuance and sale.

Q. Issuance and sale.

A. By the voting trustees.

Q. You say for sale—

A. I have forgotten whether there were 155,000 shares or not. The records will show that.

Q. The records will show that.

(Testimony of Franklin T. Griffith.)

A. But there was no formal subscription for it. The 155,000 shares that were issued to the voting trustees were handled in the same manner as the 349,995 shares. I may say, Mr. Winter, I don't think there was a formal subscription for it, nor was there one necessary under the law of Oregon. After a corporation has had subscribed the majority of its capital stock upon the organization of the corporation, further distribution of stock may constitute a legal subscription, but a formal subscription is not necessary.

Q. Yes, as long as it is paid for?

A. Yes.

Q. Of course, the additional 155,000 shares had to be subscribed for by somebody, didn't they, whether it was a formal subscription or not? [138]

A. Well, no, it need not be subscribed for. It is issued.

Q. Issued upon payment?

A. Well, the directors of the corporation have the right unquestionably in case of no par value stock to fix the value at which that stock shall be disposed of, either directly by the sale of the stock to the purchase or by indirection through voting trust. It was done through the voting trust in this case.

Q. Now, at the time of the increase and change in the capital stock of the plaintiff corporation the stockholders adopted certain resolutions, didn't they?

(Testimony of Franklin T. Griffith.)

A. Oh, that is necessary under the statute, yes. The increase, of course, was voted by the voting trustees who were then the holders of all the stock of the corporation. I think you will find that the action of the stockholders in voting the increase in capital stock and the change of the character of the stock from par to no par, was voted by the voting trustees as to all but five shares and by the individual directors as to their individual shares.

Q. Well now, when the stock of the plaintiff corporation was increased and the change from par to no par—no; it was not changed from par to no par at that time. The plaintiff corporation agreed to purchase all of the stock of the Big Horn Oil & Refining Company, amounting to a hundred thousand shares, did they not? [139]

A. I don't think there were quite a hundred thousand shares outstanding.

Q. Well, calling your attention to the minutes of the adjourned meeting of the board of directors of the Portland Associates, Inc., on page 41 of the minute book: "The directors of Portland Associates, Inc., met at the office of Franklin T. Griffith, Electric Building, Portland, Multnomah County, Oregon, at 3:00 P. M. on January 27, 1932, pursuant to adjournment, there being present at said meeting the following directors, to-wit: Franklin T. Griffith, E. W. Battleson, M. F. Swift.

"The president and vice president both being absent Mr. Franklin T. Griffith was elected

(Testimony of Franklin T. Griffith.)

chairman of the meeting and Mr. M. F. Swift acted as secretary.

“Mr. Paul Stock was present at the meeting, representing the stockholders of Big Horn Oil & Refining Company, a corporation duly incorporated under the laws of the State of Montana, and on behalf of the stockholders of said company made the following proposal:

“That Portland Associates, Inc., purchase all of the stock of said Big Horn Oil & Refining Company, amounting to 100,000 shares, and issue in payment thereof 95,000 shares of the capital stock of Portland Associates, Inc., said 95,000 shares to be issued as follows:”

And there follows a list of—

A. Various stockholders of the Big Horn Company. [140]

Q. Jess Tingle, 2000 shares; E. J. Fleming, 10,000 shares; Mrs. E. E. Fleming, 2,000 shares; T. R. Graham, 1,000 shares; J. E. Simon, 500 shares; R. J. O'Malley, 2,000 shares; J. G. Everett, 19,000 shares—

The Court: How long is that list?

Mr. Winter: Two more, your Honor.

Q. (Continuing) —G. H. Downs—

The Court: I was wondering if you are reading the same list I have. It is quite long.

Mr. Winter: Oh, no, your Honor.

Q. (Continuing) —Paul Stock, 57,500 shares.

(Testimony of Franklin T. Griffith.)

(Reading) “Mr. Stock then presented an audit of the books of said Big Horn Oil & Refining Company as of December 31, 1931, and agreed that in consideration of the purchase of the stock of said company by Portland Associates, Inc., in accordance with the foregoing proposition and as a part thereof, that he would pay or cause to be canceled the following indebtedness of said Big Horn Oil & Refining Company as shown by said audit, to-wit: Paul Stock, \$3,929.45; E. J. Fleming, \$3,500.00; J. G. Everett, representing the claim of Associated Independent Dealers, \$1,331.72; J. G. Everett, \$1,000.00, and as a further consideration for the assumption of said indebtedness of Big Horn & Refining Company, Mr. Stock requested that he be given an option to purchase 15,000 shares of the capital stock of Portland Associates, Inc., at \$1.00 per share, said option to be [141] open until July 31, 1932.

“Whereupon upon motion duly made and seconded the following resolution was unanimously adopted:

“RESOLVED That this corporation purchase all of the capital stock of Big Horn Oil & Refining Company, a corporation duly incorporated under the laws of the State of Montana, in accordance with the proposition which has been submitted to this corporation by Mr.

(Testimony of Franklin T. Griffith.)

Paul Stock, representing the owners of all of the issued and outstanding stock of said Big Horn Oil & Refining Company, and in payment therefor issue 95,000 shares of the capital stock of this corporation as follows:”

Then follows the list that I read before, so I won't repeat that.

(Reading) “BE IT FURTHER RESOLVED That in consideration of Mr. Paul Stock's assuming and agreeing to pay or cancel the following indebtedness of said Big Horn Oil & Refining Company as shown by the audit of the books of said company of December 31, 1931, to-wit:” Then follows the list of the indebtedness which I just read before. “This corporation hereby grants to said Paul Stock the option to purchase 15,000 shares of the capital stock of this corporation at \$1.00 per share at any time prior to July 31, 1932.”

Well now, then there appears some tendering of resolutions which, unless counsel wants read, I have no interest in, in electing— [142]

A. There is the same question as to the assessment of the tax against that option.

Q. And then a little further, “Mr. E. W. Battle-son offered to lend the corporation the sum of \$10,000 in consideration of its granting to him an option to purchase stock of the corporation at \$1.00 per share at any time prior to July 31, 1932. Where-

(Testimony of Franklin T. Griffith.)

upon upon motion duly made and seconded the following resolution was unanimously adopted:

“RESOLVED That in consideration of his lending this corporation the sum of \$10,000, Mr. E. W. Battleson be and he hereby is granted an option to purchase 10,000 shares of the capital stock of this corporation at any time prior to July 31, 1932, at the price of \$1.00 per share”,

and a similar resolution upon the consideration of your loaning the corporation \$10,000—well, I had better read it.

(Reading) “Mr. Franklin T. Griffith offered to lend the corporation the sum of \$10,000 in consideration of its granting to him an option to purchase stock of the corporation at \$1.00 per share at any time prior to July 31, 1932. Whereupon upon motion duly made and seconded the following resolution was unanimously adopted:

“RESOLVED That in consideration of his lending this corporation the sum of \$10,000, Mr. Franklin T. Griffith be and he hereby is granted an option to purchase 10,000 shares of the capital stock of this corporation at any time prior to July 31, [143] 1932, at the price of \$1.00 per share”.

Subsequent to that then appears the resolution:

“WHEREAS Mr. Paul Stock agrees to assign to the corporation 32.75 acres of land in

(Testimony of Franklin T. Griffith.)

exchange for 35,000 shares of the capital stock of the corporation”,

and the resolution accepting the offer. I don't think it is necessary to read that.

A. What is your question?

Q. Now, to the extent of 95,000 shares, this was included in the 155,000 new shares issued. Do you understand my question?

A. No, I wouldn't say it was a part of the one hundred and fifty-five, I am not sure of that. It is part of the 505,000.

Q. Part of the 505,000?

A. Yes. That resolution, by the way, is——

Q. Well, the 349,000 shares had been fully paid for and subscribed by your brother, and——

A. It was all in the hands of the trustees. What Mr. Stock got, that is the part I want to refer to. That resolution is incorrect where it refers to capital stock. What was dealt in was voting trust certificates. That is all that was issued.

Mr. Winter: Now, I ask that that answer be stricken. It is a conclusion, and the record speaks for itself, the minutes of the board of directors, and it was voluntary. No question was asked, and I ask that it be stricken.

The Court: I will reserve decision.

The Witness: I would ask the Court to permit me to amplify [144] my answer to the question.

Mr. Winter: Q. Well, Mr. Griffith, you have been an attorney for forty-four years here and I

(Testimony of Franklin T. Griffith.)

know that your counsel is supposed to take care of you.

A. Because I have been a practicing attorney for forty-four years I have some little knowledge of the rules of evidence.

Q. Well, never mind.

A. But on that point, and just while you are on it, it is better to discuss that at this time, I think, if I may.

Q. Well, Mr.——

The Court: Go ahead, I want to hear his statement.

A. Evidence of ownership of the stock, capital stock, ever issued by the corporation was held, four shares by the directors, the original subscribers, and all the rest of it was at all times held by the voting trustees. This resolution——

Mr. Winter: Q. Who got all the money for selling the stock?

The Court: Let him finish, Mr. Winter.

Mr. Winter: I thought he was through. Sorry.

The Witness: This resolution is a little carelessly drawn when it speaks about capital stock as having been issued to the owners of the Big Horn Oil & Refining Company. The reference to capital stock there was really a reference to the voting trust certificates, and the records now in evidence will show that no capital stock was ever issued to Mr. Paul Stock, and the shares that were issued were voting trust certificates only. [145]

(Testimony of Franklin T. Griffith.)

The Court: Now your question, Mr. Winter?

The Witness: Who got the money?

Mr. Winter: Q. Can you tell the Court what the corporation received for that 155,000 new shares?

A. Varying prices for the stock as it was sold by agents of the corporation, who made sales in accordance with the directions of the directors, as also shown by the minutes, and advised the voting trustees to turn the money to the treasury of the bank, whereas the treasurer of the corporation authorized them to issue voting trust certificates.

Q. Well, on all the certificates that were deposited with the voting trustees then they issued voting trust certificates as representing that stock turned in?

A. Well, yes. The voting trustees received the right——

Q. Now, in your resolution at the time to increase and change the capital stock, I find this:

“Resolved that each and every share of said increase of capital stock so issued, sold or disposed of shall be under and subject to all of the terms and conditions of that certain voting trust agreement entered into May 1, 1931, by and between the stockholders of Portland Associates, Inc., and Franklin T. Griffith, C. R. Griffith and E. M. Steell, Trustees, under which agreement Henry F. Waechter has been

(Testimony of Franklin T. Griffith.)

substituted for E. M. Steell as such trustee. There shall be issued to each purchaser of any part of said increase of capital stock voting trust certificates under said voting trust [146] agreement and there shall be issued to said Trustees for the benefit of such purchasers certificates of stock for a corresponding number of shares so sold, the same to be held by said Trustees under said voting trust agreement for the use and benefit of the purchasers of said units, the money paid for said units to go into the corporate treasury for the use and benefit of Portland Associates, Inc.”

That resolution was adopted by the stockholders of the corporation, was it not?

A. The minutes so recite it.

Q. That is the situation. Now, whenever a purchaser of any part of the capital stock, of the increase in capital stock, purchased stock he was not given the stock but he was given a voting certificate?

A. He was not purchasing stock, he was purchasing a voting trust certificate entitling him to receive the evidence of legal title of a share of stock at the expiration of the voting trust.

Q. Well, the corporation sells the stock, doesn't it?

A. It transferred the stock to the voting trustees, so the control would be left there. The pur-

(Testimony of Franklin T. Griffith.)

chaser received only trust certificates, that is what he bought, that is what he got.

Q. That is what he got, but it was represented share for share of corporate stock, was it not?

A. Everybody understood when they bought the stock or the voting trust certificates they were buying voting trust certificates, [147] which would entitle them to a certificate of stock for the same number of shares at the expiration of the voting trust.

Q. Well, the corporation didn't have any voting trust certificates to sell representing that increase in stock until it was paid for?

A. Of course not.

Q. No.

A. But the voting trustees were acting there for the benefit of the corporation and its stockholders and holders of the beneficial certificates. I don't know just what is running around in the back of your head, Mr. Winter, but I do know the facts of this matter and I know just what occurred.

Q. Well, no stock certificates in the corporation were actually issued to the new subscribers or the new purchasers representing the increase in capital stock, were there? A. No.

Q. That was all in one certificate that went—505,000 share certificates that went to the trustees?

A. The only certificates that were held by those purchasing interest in the corporation were voting trust certificates.

(Testimony of Franklin T. Griffith.)

Q. Now, upon the expiration of the voting trust if it had been canceled those purchasing would have been entitled to a share of stock in the corporation, would they not? A. Yes.

Q. Yes, and their voting trust certificate represented a share [148] of stock in the corporation deposited with the depositor of the voting trust?

A. Representing the right at the expiration of the voting trust to receive a share of stock.

Q. And as I understand your counsel, you are not contesting the transfer by one holding a voting trust certificate to another purchaser of a voting trust certificate?

A. No, we have paid that tax.

Q. That would be a transfer of voting trust certificates.

A. Mr. Phillips in his wisdom didn't think it was worth while contesting that, and the government has the money.

Q. Now, when you say there was no consideration for the granting of these options which are read in the resolution, you mean that you didn't purchase any of that, you didn't exercise that option? A. Never did.

Q. Don't you think you had a right to exercise that option, a legal right to have exercised that option up until July 31st, 1932?

Mr. Phillips: Just a moment. I will have to object to that, your Honor, as asking for a con-

(Testimony of Franklin T. Griffith.)

clusion as to whether or not he had the right. The record here speaks for itself.

The Court: I would like to hear his answer.

A. I would like to hear it. Yes, unquestionably I would have had the right to do it, but I would have to do it in the absence of that record. [149]

Mr. Winter: Q. Not if the corporation didn't want to sell you any of the stock you wouldn't have had the right, would you?

A. I was very largely the corporation.

Q. And that is the reason?

A. No. I want to have a record there, Mr. Winter, to be frank with you, that as an insider if there was to be any insider in a successful enterprise, that I was not asking for any right to buy the stock on any more favorable terms, notwithstanding the amount of money that I had in it, than it was sold to the general public. That was the whole point.

Q. Now, Mr. Griffith, irrespective of the fact that someone else could have, you were still granted an option under that resolution to purchase 10,000 shares of stock because you had loaned the corporation ten thousand dollars, isn't that a fact?

A. That was a part of it.

Q. Yes. You didn't exercise it because you could have bought it on the market maybe at 30 cents, is that right?

A. I never bought a share on the market. I never bought a share of it except with money that

(Testimony of Franklin T. Griffith.)

went directly into the corporation.

Mr. Winter: I don't think there is anything else, your Honor. I think that is all.

The Witness: At that time——may I add this without offending your ideas about procedure? At that time there had been no——

Mr. Winter: If the Court doesn't stop you, I won't.

The Witness: If we could find anybody else willing to pay one [150] dollar a share for that stock——Battleson and I loaned it because they couldn't get the money anywhere else.

Redirect Examination by Mr. Phillips:

Q. Those resolutions he read with reference to the options in the minutes, those are the same ones that I referred to in my direct examination, and I think those are the ones you referred to in your answers then, that there was nothing paid, never accepted, and no stock or voting trust certificates ever issued to any of the people mentioned?

Mr. Winter: Now, if the Court please, there are no less than five questions in that. Now, when he said there was no money paid, there was a loan here of ten thousand dollars, and the resolution so provides, and that was the reason for granting it. He gave something for granting that right. I will submit that——

Mr. Phillips: Well, I will break the question up, then if it is more convenient for you, so that you can make one objection to a part of it.

(Testimony of Franklin T. Griffith.)

Q. With reference to those same resolutions that he read, was there ever any other writing of any kind between the corporation and you and Mr. Battleson and Mr. Stock with reference to those options and what is shown in those minutes?

A. None.

Q. Was there ever any acceptance by any one of you of those options? [151]

Mr. Winter: Now, just a minute. We will object to that as a conclusion, as to whether or not it is necessary for him to accept, and it is irrelevant, and asks for a conclusion as to whether or not an option—whether or not an option has been granted, that is the only question here.

The Court: Admitted subject to the objection.

Mr. Phillips: Q. Was there ever any money paid by any of you on account of those options referred to in those resolutions?

A. We paid nothing for the option. We loaned ten thousand dollars to the corporation, each of us, and that money, when the properties were finally sold, was repaid to us.

Q. That was evidenced by notes, was it?

A. Evidenced by notes.

Q. And those notes were paid by the corporation?

A. Paid by the corporation when it was finally liquidated.

Q. But there was nothing paid for the pur-

(Testimony of Franklin T. Griffith.)

chase of any stock under these purported options?

A. No, nothing.

Q. And no stock or trust certificates ever delivered to any one of you on account of it?

A. None.

Q. Now, with reference to the Big Horn Oil & Refining Company referred to in the resolution read from the minutes of the same day, it refers to shares of stock of the corporation, but did the corporation have anything outstanding at any time other than voting— [152] other than the stock in the name of the voting trustees?

A. No capital stock of the corporation has ever been outstanding other than that held by the voting trustees and the five directors, qualifying shares.

Q. And these stock certificates, or these trust certificates—well, I will state it another way. Were voting trust certificates issued to this list of Big Horn Oil & Refining Company stockholders representing the number of shares as shown in the minutes?

A. They were all given voting trust certificates for the number of shares represented by that—

Q. And those were included in the list of voting trust certificates that are attached to the complaint in this case, I take it, the same list of all the voting trust certificates?

A. They would be included therein.

Mr. Phillips: I think that is all.

(Testimony of Franklin T. Griffith.)

Recross Examination by Mr. Winter:

Q. Mr. Griffith, when you say there was no stock outstanding, all the stock to the extent of 505,000 shares was eventually outstanding and deposited with the voting trustees under a trust agreement?

A. I said there was none of it outstanding except that which was issued to the voting trustees and the five original directors.

Q. Well, there was a stock certificate No. 1 to your brother [153] for 499,000 which was then assigned and transferred to the voting trustees which was outstanding at the time it was issued to him, was it not?

A. I have just answered that. He was a voting trustee and one of the original directors. None of the stock of the corporation has ever been outstanding except that which was held by the five original directors and the voting trustees.

Q. Well, at the time—then you mean at the time the stock certificate No. 1 was issued to C. R. Griffith, one of the originals who really subscribed to all the stock with the exception of one dollar, it was outstanding then in his name?

A. Yes, but he was one of the five directors. That is the answer I have just given you.

Q. Well, he didn't continue as one of the five directors, Mr. Griffith.

A. Well, neither did I as a director. I held and hold today one share of the capital stock, actual

(Testimony of Franklin T. Griffith.)

capital stock of the corporation. Each of the five directors must hold at least a share under the laws of this state to be qualified to act.

Q. And that has not been deposited with the voting trustees?

A. Never. It is held individually, and those are the only shares of capital stock that are held by anybody other than the voting trustees.

Q. And when you say "held", you mean deposited under the trust?

A. I do not; I mean owned. The legal title is still in the [154] voting trustees. They have outstanding voting trust certificates.

Q. Voting trust certificates have been issued to them as trustees?

A. No, the shares of stock were issued to the voting trustees. The voting trustees in turn have issued voting trust certificates.

Q. Representing their shares of stock so deposited or so held by them?

A. Representing the shares of stock issued originally to the voting trustees and still held by them. Get this point—

Q. You mean the certificates which were originally issued?

A. Pardon me, but I want to make this a little bit more elaborate. No purchaser of voting trust certificates was ever, except my brother and the four directors, was ever the owner of any shares of

(Testimony of Franklin T. Griffith.)

the capital stock of the corporation itself. This voting trust was not one whereby a large group of capital stockholders surrendered their capital stock to a voting trust and received voting trust certificates. The original issuance of the stock, with the exception of the 349,000 shares originally issued to my brother, were issued only once, and then issued to the voting trustee. 155,000 shares of capital stock was never held by anybody except the voting trustees.

Q. Well, the corporation by its resolutions authorized the issuance of 95,000 shares of its capital stock to the stockholders of the Big Horn Oil & Refining Company in the resolution of Janu- [155] ary 27th, 1932, didn't it?

A. It authorized that according to the resolution, which I have just explained to you was not the intention, and it was not done.

Q. But it was included in the 505,000 shares and stock certificates issued in lieu thereof?

A. Well, it was issued apart by the voting trustees from the block of 505,000 shares of actual capital stock held by the voting trustees, but I have just explained to the Court that 95,000 shares referred to therein was erroneously described as capital stock.

Q. You don't—

A. Just a moment. When the intention was to convey to them voting trust certificates which in

(Testimony of Franklin T. Griffith.)

fact were issued to the original stockholders of the Big Horn Company. They never held any shares of the capital stock of the corporation. They held——

Q. Stock in the corporation has to be originally issued, doesn't it?

A. It has been issued, as I have explained a half a dozen times, only to the voting trustees.

Q. And it is issued to the person or persons paying for it?

A. Not necessarily. It may be received——

Q. Well, unless they transfer their right to receive it to somebody else?

A. No, that isn't it at all. They don't transfer their right because what they buy in the first place is a voting trust certi- [156] ficate.

Q. Where on the corporation's records does it show that——indicate that the corporation sold voting trust certificates?

A. Well, I think that the resolutions of the directors there direct and authorize the voting trustees to sell voting trust certificates for the benefit of the corporation.

Q. Well, your resolution at the time of the increase of the capital stock says that, "There shall be issued to each purchaser of any part of said increase of capital stock voting trust certificates under said voting trust agreement and there shall be issued to said Trustees for the benefit of such

(Testimony of Franklin T. Griffith.)

purchasers certificates of stock for a corresponding number of shares so sold”.

A. Exactly. That is what happened. The purchaser received voting trust certificates.

Q. And here again on page 41 of Plaintiff’s Exhibit 3, being the minutes of the adjourned meeting of the board of directors of the plaintiff corporation,

“That Portland Associates, Inc., purchase all of the stock of said Big Horn Oil & Refining Company, amounting to 100,00 shares, and issue in payment thereof 95,000 shares of the capital stock of Portland Associates, Inc., said 95,000 shares to be issued as follows:”

A. I have explained that several times. That 95,000—

Q. You contend that the resolutions are all wrong?

A. I do not. I say that they are incorrect in referring casually to capital stock when what was meant was the voting trust [157] certificates, which was in fact issued.

Q. Well, the corporation couldn’t issue voting trust certificates, could it?

A. It authorized the issuing of them.

Q. But not until the shares of stock were placed in the trust?

A. Well, the voting trustees couldn’t very well authorize the issuance of the certificates unless they owned the stock.

(Testimony of Franklin T. Griffith.)

Q. No. Then until the 95,000 shares which were exchanged for the—or the rights to the 95,000 shares was exchanged for the stock of the Big Horn corporation, the trustees could not issue trust certificates?

A. The trustees could do this: They could authorize the issuance of a voting trust certificate, knowing that the stock would be issued to them by the corporation. Practically, the transaction was simultaneous.

Q. Of course, all the authority the voting trustees had under the voting trust agreement is that shown by the voting trust agreement?

A. That is true, except in their other capacities. But as voting trustees their powers were limited by the voting trust.

Mr. Winter: I think that is all.

Mr. Phillips: That is all.

Mr. Winter: Oh, pardon me, Mr. Griffith, I wanted to ask you one question.

Q. There appears to be on page 27 of this minute book, something [158] has been torn out. Do you know anything about what it was in the minute book?

Mr. Phillips: I might explain that. I am secretary of that corporation now, and that has been that way ever since I received the minute book, and I haven't changed it at all, and I have often wondered——

(Testimony of Franklin T. Griffith.)

The Witness: Does it break into the continuity of the record?

Mr. Phillips: No, it doesn't seem to break the continuity of the record, but I don't know what was in there or why it was ever removed. That is the same way it was when I got it, I think, in 1934.

The Witness: It may be a footprint without significance, but it may have something to do with it, I don't know.

Mr. Winter: Apparently the page is marked 27, and I think counsel will agree that it looks like something has been taken out. Now, whether it was something that is irrelevant and immaterial to the records of this company, I don't know. It might be a subscription for the new hundred and fifty-five thousand shares, or it may have been something else, I don't know.

Mr. Phillips: I might say that so far as this stamp tax is concerned, the stamp tax was levied after I was secretary, and you examined these books in our office.

The Witness: Did you take that out? I turned this fellow loose for three or four days with these books. I don't know what he did with them. [159]

(There was a further discussion off the record.)

(Witness excused.)

The Court: We will take a short recess.

(Short recess.)

Mr. Phillips: Call Mr. Lommel.

LEO C. LOMMEL

was thereupon produced as a witness in behalf of the plaintiff and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Phillips:

The Clerk: Your name, please.

A. Leo Lommel.

Mr. Phillips: Q. Mr. Lommel, what is your occupation?

A. Assistant trust officer, Title & Trust Company.

Q. And how long have you been there in that capacity? A. About four years.

Q. And prior to your time have the assistant trust officers done the same duty as you do now?

A. Yes.

Q. Since you have been there have you had charge of the issuance and transfer of any voting trust certificates under the voting trust agreement that has been mentioned here in this case?

A. I have.

Q. You have been here during the testimony and heard what we are [160] talking about?

A. Yes.

Q. Now, will you tell the Court what mechanics you go through in the issuance of voting trust certificates—well, rather, before that, I will have you identify the books here first.

The Court: Mr. Phillips, he testified that he heard what we were talking about, but I wonder if he knows what we were talking about.

(Testimony of Leo C. Lommel.)

Mr. Phillips: Well, I think it would be unusual if he did, as long as nobody else understands it thoroughly yet, apparently.

Q. I will hand you what appears to be the voting trust certificate books, and I will ask you if those are the voting trust certificate books that have been used for the issuance of voting trust certificates? A. These are.

Q. Under that trust. Now, there are seven of them there, and is that all of the voting trust certificate books?

A. There are six. Those are all.

Q. Six. That is all of them, six?

A. Yes.

Q. And are there any other voting trust certificate books or stubs under this trust?

A. No, these are all of them.

Q. These are all. [161]

Mr. Phillips: Can these be admitted under the same stipulation as the others?

Mr. Winter: Yes.

Mr. Phillips: We will offer these in evidence.

Mr. Winter: No objection. And it may be stipulated that the Court may read them all.

(The six voting trust certificate books so offered were received in evidence and marked Plaintiff's Exhibits Nos. 5, 6, 7, 8, 9 and 10, respectively.)

Mr. Phillips: Q. Now, just explain to the Court, will you open that book and explain to the Court

(Testimony of Leo C. Lommel.)

what you did when you issued a voting trust certificate and what notations you made in the stub in the book.

A. In issuing voting trust certificates we issue the number of shares first, then the name to whom it was issued, the address, the date; on the next line we would indicate whether it was an original issue or an assignment.

Q. And when there was an original issue how would you designate it?

A. We would designate that by the initials "O. I."

Q. "O. I." The "O. I." then in that space refers to an original issue in each case?

A. That is right.

Q. And on transfers you would indicate there was a transfer?

A. On transfers we would indicate the number of the certificate [162] from which it was transferred.

Q. I see. Now, you issued voting trust certificates only upon the authorization of the trustees?

A. Of the trustees, yes.

Mr. Phillips: You may cross examine.

Cross Examination by Mr. Winter:

Q. When you say you indicate the original issue do you mean that would be the original certificate which would be issued against—the first time it would be issued against a particular share of stock, is that what you mean? A. That is right.

(Testimony of Leo C. Lommel.)

Q. That wouldn't mean that it would be issued to the person who necessarily deposited that stock with the voting trustee? A. No.

Q. Now, on the transfers, you mean you indicate whether they were transferred—where a certificate had been issued to someone else and now a new certificate in lieu thereof was being issued?

A. It would be the transfer of an original certificate, of an original issued certificate.

Q. Of an original issued certificate?

A. Yes, or a certificate that had been transferred and then transferred again.

Q. Now, of course you understood that there were two hundred [163] and forty-nine thousand shares of stock which were deposited by the corporation? A. There were 505,000 shares.

Q. They were all deposited there?

A. Deposited with us.

Q. Yes. That was in the one certificate, No. 7, which is in evidence?

A. In one certificate. I don't recall the number.

Q. You don't remember the number. Now, where did you get your authority to issue trust certificates? Who gave you that authority and in what form was it, if any?

A. We received written instructions signed by—the ones that I have seen, Franklin T. Griffith?

Q. Do you have those authorizations with you?

A. I do, at least some of them.

(Testimony of Leo C. Lommel.)

Q. Do you have them all there in the one bundle?

A. No. Well, they are in amongst other papers. Here are some of them.

Mr. Phillips: Were they all substantially in the same form?

A. Yes, they were all in letter form, typewritten and signed by Franklin T. Griffith.

Mr. Winter: Q. You didn't indicate in what capacity he signed it; he just signed it Franklin T. Griffith?

A. That is the way he signed them, yes.

Q. Did you understand that Franklin T. Griffith was the depositor [164] of the shares of stock with the trustee for which you were issuing the trust certificates?

A. He was representing—he was one of—

Mr. Phillips: Just a moment. If the Court please, we object to that as asking for the conclusion of the witness. The record speaks for itself.

The Court: Admitted subject to the objection.

Mr. Winter: Q. Will you answer the question, Mr. Lommel? A. Answer that?

Q. Will you answer it, yes.

A. What was the question?

Q. Answer it, will you please? Do you remember the question?

A. What was it? I have forgotten.

Mr. Winter: Mr. Reporter, read the question.

(Thereupon, the reporter read the question.)

(Testimony of Leo C. Lommel.)

A. It was our understanding he was one of the trustees and depositing them for the trustees.

Q. He was one of the trustees?

A. The voting trustee.

Q. Were you familiar with the trust agreement?

A. To a certain extent, yes.

Q. Then you didn't understand that under the trust agreement the trust certificates were to be issued to the purchasers of stock, or depositors of stock? A. The trust certificate? [165]

Q. Yes. A. The voting trust certificates?

Q. Yes. A. No, I guess——

Q. You didn't know that. In any event, upon the receipt of the authorization from Franklin T. Griffith you issued certificates as specified in those——

A. That is right.

Q. And there was a letter of authorization issued to you, your company, for every trust certificate that was issued?

A. I take it we have a letter for each one. I haven't checked them personally, but I believe we have them in the files.

Q. Now, Mr. E. M. Steell also issued letters of authorization to you signed, "Very truly yours, E. M. Steell" on stock held by him?

Mr. Griffith: That was a transfer.

Mr. Winter: Q. (Continuing) "Please deliver to Mr. M. F. Swift or on his order 2,500 shares of Portland stock you hold of mine. Thanking you, I remain, Very truly yours, E. M. Steell", dated

(Testimony of Leo C. Lommel.)

April 20th, 1932, addressed to Title & Trust Company, Portland, Oregon.

A. Well, in that case we were evidently holding some for him pending instructions as to what certificate should be issued in lieu thereof.

Q. Calling your attention to a letter of June 20th, 1932, ad- [166] dressed to Title and Trust Company, 91 Fourth street, Portland, Oregon,

“Gentlemen: Please issue the following voting trust certificates of Portland Associates: C. H. Griffith, one certificate for 1,476 shares; C. H. Griffith, one certificate for a thousand shares; C. H. Griffith one certificate for a thousand shares; C. H. Griffith, one certificate for 590 shares;”—and so forth and so on down there, a number of men, down to 7,000 shares—
“Very truly yours, Franklin T. Griffith”.

Were these certificates in substantially the—or these letters of authorization in substantially the same form as I have read?

A. As I recall it, they were practically the same, just a simple authorization or instruction to issue the various certificates.

Q. Calling your attention to a letter of March 1st, 1932,

“Title and Trust Company, 91 Fourth street, Portland, Oregon. Gentlemen: Please make issues of original certificates as follows: N. A. Ledge, 500 shares; O. P. Taylor, 700 shares. Very truly yours, Franklin T. Griffith, Trustee, Portland Associates, Inc.”

(Testimony of Leo C. Lommel.)

Now, does that letter of authorization have reference to some shares which were deposited in the name of the trustee, Portland Associates, Inc.?

A. I think that authorization would be just the same as one of the others, only perhaps that particular one was signed as trustee.

Q. You think the use of the words "Trustee, Portland Associates, [167] Inc." refers to the voting trust agreement rather than to Griffith as being trustee of some stock of the Portland Associates, Inc., or didn't you go into it?

A. I didn't go into that very thoroughly.

Q. As long as they were signed Franklin T. Griffith they weren't questioned?

A. Franklin T. Griffith, we took his instructions.

Q. Or anyone else who had some stock on deposit with you? A. Yes.

Q. I think you stated that on that original issue, that was the original certificates issued against the 505,000 shares which were originally deposited, is that right? A. That is right.

Q. Of course, as to who was the beneficial depositors of that stock, you don't know?

A. I don't know.

Q. No.

Mr. Winter: I think that is all.

Redirect Examination by Mr. Phillips:

Q. Do you act as agent of the voting trustees down there? A. Of the voting trustees.

(Testimony of Leo C. Lommel.)

Q. Yes, and Mr. Franklin T. Griffith was chairman of the voting trustees? A. He was. [168]

Mr. Phillips: That is all.

(Witness excused.)

Mr. Phillips: I want to recall Mr. Griffith for a question.

FRANKLIN T. GRIFFITH

was thereupon recalled as a witness in behalf of the plaintiff and, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. Phillips:

Q. You have already been sworn, Mr. Griffith. In regard to the letters, you have heard the reading of the letters here when Mr. Lommel was a witness?

A. Yes.

Q. Was that your usual way of authorizing the issuance of voting trust certificates, to write the Title and Trust Company a letter?

A. Yes. The Title and Trust Company had no control over any of the certificates except voting trust certificates.

Q. The Title and Trust Company had nothing to do with the issuance of stock by the corporation?

A. No.

Q. No. Was there any other stock on deposit, any other stock of the Portland Associates that was

(Testimony of Franklin T. Griffith.)

on deposit, or was there any other issued, even, except that which was under the voting trust agreement?

A. Never, except the four original shares held by the directors [169] after Charlie turned back his 249,000 shares. All this correspondence, of course, related to the disposition of voting trust certificates issued against the 505,000 shares of original stock held by the corporation. As I understand, the controversy here is that we claim that the original issue of that stock to the voting trustees was taxable and the tax has been paid and the voting trustees were acting in a representative capacity for the holders of the voting trust certificates, and that the taxes when originally issued was covered by the tax levied against the stock when it was issued first to the voting trustees, the same way as if it had been issued directly to each one of the purchasers of voting trust certificates. It is a double tax.

Mr. Phillips: You may cross examine.

Cross Examination by Mr. Winter:

Q. Well, all of the stock of the corporation was fully paid for before it was issued, was it not, to the voting trustees?

A. Paid for on the basis of what the directors had agreed it should be sold for after the change to no par value stock, yes.

Q. And the stock was never issued to the subscribers of the interest in the corporation, but it

(Testimony of Franklin T. Griffith.)

was issued direct to the trustees under that voting trust agreement?

A. The capital stock of the corporation itself, as I have explained to you, was issued directly to the voting trustees. The only evidence of ownership issued to the general public [170] purchasing voting trust certificates were voting trust certificates. Those are still outstanding.

Q. Well, the voting trustees were not subscribers to the stock, were they?

A. No. My brother was the original subscriber to the stock.

Q. The voting trustees were never subscribers to the stock?

A. No, they never subscribed to stock.

Q. No. They never paid for it themselves?

A. They paid for it as representatives of the holders of the voting trust certificates.

Q. Yes, for other people?

A. As the representatives of other people.

Q. As the representatives of other people.

A. And they held the title to the stock as such representatives.

Q. You don't contend, Mr. Griffith, that the stock was not in effect subscribed for although the words "Subscription through the additional 155,000", no agreements were made, do you?

A. No, the stock was issued lawfully.

Q. Yes. A. And paid for.

Q. And——

(Testimony of Franklin T. Griffith.)

A. That is, the voting trust certificates were.

Q. And do you understand ordinarily that one, when he subscribes, whether it is by formal subscription or not, he is entitled to receive that stock he subscribes for if he pays for it? [171]

A. He is entitled to receive what he subscribes for, which in this case were voting trust certificates.

Q. Yes, representing the shares of stock?

A. That is what was originally issued.

Q. And upon the expiration of the trust agreement he would receive those shares of stock which are being held there for him?

A. He had the right to. He still has the right to, and they haven't exercised it.

Q. And in the trust certificate it expressly—in your trust agreement it expressly provides that it represents a particular number of shares on deposit there?

A. Surely. The voting trustees have no right to issue voting trust certificates for any stock that was not——

Q. Of course you understand that there is no tax liability on a corporation for an original issue of a trust certificate?

A. That is just the point.

Q. I mean to the person depositing the certificate there.

A. Well, that isn't the question. If you want to ask me what I understand the law to be, I will tell you. The stock of a corporation when issued to the

(Testimony of Franklin T. Griffith.)

voting trustees was subject to an original issue tax, which was paid, and is not in controversy. The controversy here in the principal amount is upon your contention that the holders of the voting trust certificates were entitled to receive the stock, which would be a transfer to them, although the voting trustees were holding it in trust for them in a representative capacity. The original issued tax was all the tax that could be upon the original issue.

Q. I know, Mr. Griffith, but you understand that the tax has been paid on the original issue of the full amount of the subscription—I mean the full amount of the capital stock of the plaintiff corporation? A. Yes.

Q. Has there been any—and the taxes also have been paid and which are now in issue on the transfer of those subscribing or being entitled to receive that stock or the transfer of their right to receive that stock? A. No, that isn't exactly right.

Q. You don't understand that that is the question.

A. I understand the question on this \$3,100 to be this, that you are contending that we are subject to two tax assessments because the people who held the voting trust certificates, the original holders of voting trust certificates, did not at the time of the original issue of the capital stock of the corporation receive shares of the capital stock of the corporation, but received instead thereof a right to receive those original shares if and when the termination

(Testimony of Franklin T. Griffith.)

of the voting trust arrived. My contention is that the trustee is holding the stock as trustee and representative of the stockholders.

Q. Now Mr. Griffith, if the subscribers for the stock had received a certificate of the stock— [173]

A. The subscribers——

Q. —then you understand there would be an issuance tax due?

A. Yes, an issuance tax on the stock——

Q. Now, if instead of receiving that stock they authorized it to be made out to Richard Roe——

A. That is just your point, Mr. Winter, they didn't authorize anything of the kind. They purchased voting trust certificates, and that is all they received.

Q. Let me finish my question. I say, supposing they had authorized it to be issued to Richard Roe. Then do you understand there would still be only one tax due?

A. I don't think that is the question in controversy here.

Q. I didn't ask you that. I asked you if you understood whether there would be just one tax due.

A. I don't think that is material, Mr. Winter.

Mr. Phillips: That is a matter that is not within the issues here. It is drawing some kind of a hypothesis outside of what we have in issue here. I don't think it is proper.

The Court: Well, if Mr. Winter feels it is material and wishes to——

(Testimony of Franklin T. Griffith.)

Mr. Winter: No, your Honor, it is one of the things this Court has to decide. What I am trying to clear up is that the witness is trying to state what the government's position is here, when it is in error.

The Court: I will have to make the finding. You are about [174] to wind up, are you?

Mr. Winter: No, your Honor, I am afraid we will have to call a witness here on some matters, and I think we had better adjourn.

The Court: Are you going to call another witness who is not in the court room?

Mr. Winter: No, he is in the court room.

The Court: Let's go on and finish, unless you are all worn out.

Mr. Winter: It might be rather lengthy.

The Court: We can do it in a half hour, can't we?

Mr. Winter: I think so.

The Witness: Are you through with me?

Mr. Phillips: That is all.

(Witness excused.)

Mr. Phillips: I think we can stipulate on the regulations. Under the regulations original issues of voting trust certificates are not taxable. Regulation 71—unfortunately, I don't have a '26 print, but I have a '32 print. It might be confusing. I understand Mr. Winter—

Mr. Winter: We can stipulate that there are regulations and which have the force and effect of law, unless otherwise authorized, and I have—one of my associates have scoured the country to get a regulation which was in effect at the time [175] this controversy arose, which is Regulation 71 in the 1926 print, and counsel and I have stipulated that it may be made a part of the record in this case and furnished to his Honor in deciding the case.

Mr. Phillips: That is quite agreeable. I tried to get a '26 print in Washington, and they apparently were all out of them. The plaintiff rests.

Mr. Winter: Now, if the Court please, in behalf of the defendant we will offer in evidence a certified copy of the Assessment Certificate and that portion of the October, 1933, Miscellaneous Tax Assessment List—Oregon collection district—showing an assessment of \$9,772.29 documentary stamp tax, against Portland Associates, Inc., Portland, Oregon. A certified copy, certified by the Secretary of the Treasury.

Mr. Phillips: We would like to interpose our objection to this on the ground it is incompetent, irrelevant and immaterial, and it is not within the issues of the case, and the fact that the assessment was made has been alleged in the answer and admitted again in the reply.

The Court: Admitted subject to the objection.

(Certified copy of Assessment Certificate so offered and received was marked received as Defendant's Exhibit 19.)

Mr. Winter: We will offer in evidence a certified copy of the Assessment Certificate and that portion of the November, [176] 1933 Miscellaneous Tax Assessment List—Oregon collection district—showing an assessment of \$205.60 documentary stamp tax, against Portland Associates, Inc., c/o Title and Trust Company, Depository, Portland, Oregon.

The Court: The same objection, Mr. Phillips?

Mr. Phillips: The same objection, your Honor.

The Court: Same ruling.

(The certified copy of Assessment Certificate so offered and received, was marked received as Defendant's Exhibit No. 18.)

Mr. Winter: And a certified copy of that portion of the November, 1935, Miscellaneous Tax Assessment List—Oregon collection district—showing assessment of five per cent penalties in the amounts of \$488.61 and \$10.28 and interest in the amounts of \$1,942.73 and \$43.89, against Portland Associates, Incorporated, c/o Portland Title Trust Company, Portland, Oregon.

Mr. Phillips: Same objection, your Honor.

The Court: Same ruling.

(The certified copy of Assessment Certificate so offered and received, was marked received as Defendant's Exhibit No. 17.)

Mr. Winter: A certified copy of the Assessment List, Oregon collection district—

The Court: How many of those do you have?

Mr. Winter: I have two more, your Honor.

The Court: All right.

Mr. Winter: I don't need to read them into the record; I offer them.

Mr. Phillips: And we will offer the same objection, your Honor.

The Court: Just a word or two identifying them for the record.

Mr. Winter: Well, that portion of the October, 1935, assessment list for \$2,800.00, and that portion of the February, 1937, Miscellaneous Tax Assessment List of \$175.81.

Mr. Phillips: Just a minute. May I examine those? You say a portion of it?

Mr. Winter: Yes, it is only the portion that pertains to this taxpayer. We wouldn't want to have the list—you see what they do, you see, it just shows the—I might say that the assessments have been admitted but not in the form which they allege, and there might be some controversy as to just what assessments and the dates——

The Court: Well, these are Defendant's Exhibits blank and blank, the number to be supplied by the reporter, to which Mr. Phillips is making the same objection as before?

Mr. Phillips: The same objection.

The Court: And I will admit them with the same ruling.

(The certified copies of Assessment Certificates so offered and received, were marked received as Defendant's Exhibits Nos. 15 and 16, respectively.) [178]

Mr. Winter: We will offer in evidence a certified true copy of the Claim for Refund of \$10,298.18 documentary stamp tax, with statement, analysis and schedules attached, filed by Portland Associates, Incorporated, a corporation of Oregon, Portland, Oregon. It is plaintiff's claim for refund upon which he bases his suit and which is the only basis for this action.

Mr. Phillips: The same objection, your Honor, on the grounds it is incompetent, irrelevant and immaterial, and it is not in issue in the case because it is admitted in the answer and admitted in the reply as to their affirmative allegations on the same matter.

The Court: Admitted subject to the objection.

(The certified copy of Claim for Refund so offered and received, was marked received as Defendant's Exhibit No. 11.)

Mr. Winter: I offer in evidence a certified copy of the Notice of Adjustment, the claim for refund of documentary stamp tax claimed of \$10,298.18; allowed, \$2,950.90; and rejected, \$7,347.28, signed by D. S. Bliss, Deputy Commissioner, in re: Portland Associates, Inc., Portland, Oregon.

Mr. Phillips: And we make the same objection to this, your Honor, on the same ground, and upon the additional ground that it contains conclusions of the Commissioner.

The Court: Admitted subject to the objection.

(The certified copy of the Notice of Adjustment of [179] Claim for Refund so offered and received, was marked received as Defendant's Exhibit No. 12.)

Mr. Winter: If the Court please, it shows only the basis upon which this tax is made, and it will be very helpful. A certified copy of the letter of February 18, 1937, minus notice of adjustment of the allowance and rejection of the claim.

Mr. Phillips: Same objection to the last one, your Honor.

The Court: Same ruling.

(The certified copy of letter dated February 18, 1937, so offered and received, was marked received as Defendant's Exhibit No. 13.)

Mr. Winter: And a certified copy of the Claim for Refund totaling \$2,975.81, documentary stamp taxes filed by the Portland Associates, Inc., a corporation, a copy of a letter rejecting the claim.

Mr. Phillips: Same objection, your Honor.

The Court: Same ruling.

(Certified copy of Claim for Refund, so offered and received, was marked received as Defendant's Exhibit No. 14.)

Mr. Winter: Call Mr. Canneddy.

R. C. CANNEDDY

was thereupon produced as a witness in behalf of the defendant and, after having been first duly sworn, was examined and testified as follows: [180]

Direct Examination by Mr. Winter:

The Clerk: Your name?

A. R. C. Canneddy, C-a-n-n-e-d-d-y.

Mr. Winter: State your name, please.

A. R. C. Canneddy.

Q. And what is your business, Mr. Canneddy?

A. I am an internal revenue agent.

Q. Where is your residence?

A. Los Angeles, California.

Q. Calling your attention to the matter here in controversy, the Portland Associates, did you have occasion to examine the books and records of the plaintiff corporation in connection and also the records of the depository in connection with the claim for refund filed by the plaintiff corporation?

A. I examined the book of minutes, the resolutions of the corporation, the stock certificate books and the voting stock certificate books in the office of the Title and Trust Company.

Q. Yes. Will you just state to the Court the basis of the tax which was assessed which is shown as Item No. 5 in Plaintiff's claim attached to its complaint.

A. That is the item of \$3,100.

Mr. Phillips: Just a moment. If the Court please, we would like to object to this as incompetent, ir-

(Testimony of R. C. Canneddy.)

relevant and immaterial, and asking for the conclusion of the witness. The facts are [181] all in evidence that Mr. Canneddy examined, he says, and the facts speak for themselves. It is merely an application of the law to it.

The Court: Admitted subject to the objection.

A. (Continuing) That is the item of \$3,100 involving 155,000 shares of no par value. This tax is a tax on the transfer of the right of certain subscribers or purchasers of such shares, the transfer of those persons' rights to receive the shares, due to having the stock certificate representing such shares issued in the names of the voting trustees.

Mr. Winter: Q. Now, from your examination of the records what was the basis of your statement that that tax accrued, upon what records did you base your examination?

A. It was found that the corporation received a certain consideration in payment for these shares and that per agreement between those persons and the corporation, together with the voting trustees, certificates representing the stock were issued to the voting trustees rather than going through the mechanics of first issuing a certificate in the names of the purchasers or subscribers and then transferring from those names to the voting trustees.

Mr. Phillips: Just a moment. May I ask, you mentioned the agreement, is that a written agreement?

(Testimony of R. C. Canneddy.)

A. The voting trust agreement is the only written agreement that I recall. [182]

Mr. Phillips: Well, I object, your Honor, to this testimony and move to strike the same on the ground it is incompetent, irrelevant and immaterial. If he has some agreement in mind, the agreement speaks for itself and is the best evidence. Otherwise as to any agreement between the parties, why he is not competent to testify as to any agreements made unless she was present at the time of the making of any agreements if they are oral.

The Court: I reserve decision.

Mr. Winter: Q. When you say an agreement you are referring to the trust agreement, are you, the trust agreement provided that the stock was not to be issued to them but was to be issued to the voting trustees?

A. Meaning to include the voting trust agreement, but also an apparent agreement between those subscribers or purchasers of the shares, between those persons and the corporation, the corporation not being a party to the voting trust agreement.

Q. Did you find any certificates issued to the subscribers or purchasers or those who paid money for the interest in the plaintiff corporation to the extent of 155,000 shares? A. No.

Q. Were any certificates—did you find any certificates issued to those various people?

A. I found no certificates of stock issued to the purchasers of these particular 155,000 shares.

(Testimony of R. C. Canneddy.)

Q. Well, to whom was the stock certificates themselves issued? [183]

A. The one and only certificate representing that particular block of 155,000 shares was issued in the names of the trustees under that voting trust agreement.

Q. And what certificate was that?

A. Certificate No. 7, I think it is.

Q. Yes, and what else did that include, if you know, besides the 155,000?

A. Well, that certificate was for a total of 505,000 shares, which included the 350,000 shares previously subscribed, which was issued first by Certificate No. 1 in the name of C. R. Griffith and transferred by him to these voting trustees as represented then by Certificate No. 6. It followed then that that certificate No. 6 was surrendered for cancellation and No. 7 issued in lieu thereof to the extent of the original 349,995 shares. So in the final picture of the certificate No. 7 for 505,000 shares, it included the original 350,000 shares and the 155,000 new additional shares.

Q. Now, in the plaintiff's complaint, attached to Exhibit A is item 5 which the plaintiff has designated—no, item 8, which is designated "Transfers, C. R. Griffith to treasury, 249,996 shares; tax assessed and paid, \$50.00". Could you state to the Court just what that tax represents?

A. Yes. At the time C. R. Griffith subscribed for the 349,996 shares it was made a part of his

(Testimony of R. C. Canneddy.)

subscription agreement, or offer to subscribe, we preferably call it that, it was made a [184] part of that instrument that if the corporation would accept his subscription he would donate back to the corporation 249,996 shares, and in accordance with the terms of that offer or subscription——

Mr. Phillips: The same objection to what follows, your Honor, as I made before.

The Court: The same ruling.

A. (Continuing) —in accordance with the terms of that offer or subscription, 249,996 shares were donated to the corporation, and this tax of \$50.00 represents the tax on that transfer of ownership from the subscriber, C. R. Griffith, to Portland Associates, Incorporated.

Mr. Winter: Q. Well, what actually happened with respect to the certificates of that 249,000? I mean what certificates were issued with respect to that?

A. Well, notwithstanding the terms of the offer, stock certificate No. 1 was issued by the corporation representing 349,996 shares, was issued to C. R. Griffith.

Q. Yes.

A. It then followed that subsequently, I haven't the dates here, but some weeks later C. R. Griffith assigned and transferred that particular certificate representing the 349,996 shares to——

Q. In what record does that appear?

A. On the certificate itself.

(Testimony of R. C. Canneddy.)

Q. That is on Certificate No. 1? [185]

A. Yes. And embodied in the endorsement or written in the endorsement or assignment is the names of the trustees to whom C. R. Griffith assigned and transferred those shares.

Mr. Phillips: We object to that. It shows on the record, your Honor.

Mr. Winter: Q. Now Mr. Canneddy, do you have anything further to say about that assessment?

A. I believe not.

Q. Now, with respect to items 10 and 11 shown on Plaintiff's Exhibit A to its complaint, is titled "E. M. Steell to Title and Trust Company, et al.; Trans. 2,500 shares, \$50"—no, that is "Ten". That has been refunded, hasn't it?

A. Yes, and 11 also.

Q. And 11 also. Now, with respect to items 12 and 13 appearing on Exhibit A, designated by the plaintiff as "Right to receive"—no, designated by the plaintiff as "Transfer as of June 30, 1932, 7,000 shares, \$140", that is item 12; and item 13 is, "Transfer subsequent to June 21st, 1932, 3,000 shares". Was there any reason for separating those items other than because of the change in the tax rate? A. No.

Q. To just what does that tax—no. And further it appears that, "Refund allowed and paid of \$60.00 on item 13". Can you explain to the Court the basis of that assessment? A. Yes. It was—— [186]

Mr. Phillips: The same objection, your Honor.

(Testimony of R. C. Canneddy.)

The Court: Same ruling.

A. (Continuing) Examination of the records previously referred to showed that voting trust certificates issued representing the 3,000 shares specified in item 13—

Mr. Winter: Q. Just a minute. Could you take those records if time permitted and show the Court each individual certificate and show them and draw them down, or is the—

A. No, as I recall it the particular voting trust certificates are not identified with this particular item. The reason for that, at the time this report was first made the voting trust certificates had not been issued. The deputy collectors conducting the investigation at that time were in the office, as I understand it, of the Title and Trust Company making the investigation on about June the 20th, 1932. While they were there two letters of instruction came in to the Title and Trust Company instructing, that is, they were letters signed by Franklin T. or F. T. Griffith directing the issuance of the voting trust certificates in these amounts.

Q. Those were the letters referred to by the plaintiff?

A. Yes, letters of instruction. Well, those letters came in, one of them while the boys were working there on June 20th, so they computed the tax at the rate then in effect. Then on the following day, June the 21st, when the higher rate of tax became effective, the second letter came in covering the 3,000

(Testimony of R. C. Canneddy.)

[187]shares, so they computed the tax at the four-cent rate.

Q. That was the tax based on the certificates issued to others than——

A. Well, not exactly on the certificates. It was based on the transfer of the right of the depositor of the shares—the transfer of the right of the person who had deposited the shares in the Trust—

Mr. Phillips: I object to this testimony and move to strike it, your Honor, also, on the further ground that he was not present at that time. He is testifying to something that he knows nothing about except by hearsay.

The Court: Decision reserved.

A. (Continuing) The report indicates clearly what the tax is based on. That is, the transfer of the depositor's right to receive voting trust certificates representing those shares.

Mr. Winter: Q. By that you have reference to the government's exhibit of the notice of adjustment and claim for refund? A. Yes.

Q. Is that also true of exhibit—I mean of item 13? A. 12 and 13.

Q. 12 and 13. Now with respect to item 14, Mr. Canneddy, which is shown as "Trust Certificates one to one hundred and fifty, \$1.00 par certificates," and, "150 to 398 no par". \$5,134.55, tax assessed and paid. Correct tax claimed by taxpayer, the [188] plaintiff, \$1,275.64, and \$1,450.00 refunded. Can you state to the Court just what sum the amount—the

(Testimony of R. C. Canneddy.)

claim was rejected as respect to this item? It would be the difference between \$1,450 plus \$1,275 and \$5,134.55, or \$2,408.91, is that correct?

A. Yes, that is the amount.

Q. And what is the basis for that tax liability in that, if you know? A. The basis of tax—

Mr. Phillips: The same objection, your Honor.

The Court: Overruled.

A. (Continuing) —is the same as covering items 12 and 13. The issuance of voting trust certificates to persons different than those who deposited the shares in the voting trust. It would constitute—or, the basis of the tax is that the depositors of the shares in trust transferred their rights to receive those voting trust certificates.

Mr. Winter: Q. Now with respect to item No. 15, which is trust certificate 406 to 417; see schedules hereto attached; that is referred to in plaintiff's complaint, Exhibit A.

A. That is certificates 409 to 17, isn't it?

Q. Well, it is 404 in the complaint. You say it should have been from 409 to 417, inclusive?

A. Well, according to this data I have.

Q. Yes. Now, just what does that tax—what is the amount of [189] the tax liability involved in that issue?

A. The amount in issue in this case?

Q. Yes. A. Is \$65.60.

Q. What is the amount of tax originally assessed? A. \$205.60.

(Testimony of R. C. Canneddy.)

Q. Had there been any payments prior to that time? I notice the plaintiff says the stamps were purchased. Is that what your findings disclosed, of a hundred and——

A. There were stamps purchased in the amount of \$106 covering part of the tax. The total amount of tax involved under those several certificates numbered was \$311.60.

Q. Of which \$140.00 apparently has been admitted by the plaintiff?

A. Yes, and paid, and then in addition to that the plaintiff purchased stamps in the amount of \$106.00 and affixed them.

Q. Against which certificates was that, if you know?

A. I am not able to say.

Q. Now, what is the basis of that tax, Mr.——

A. There is two different classes of tax involved here. Certificate No. 409 I am not able to say here, I don't believe. I don't believe I can explain the particular one, certificate 409, that involves \$28.00, but certificate No. 10—or 410, rather, is apparently a transfer of 3,500 shares represented by a voting trust certificate previously issued. [190]

Q. Previously issued?

A. We could probably by referring to the voting trust certificate book, the stub of No. 410, determine just which——

Q. Well, that has been admitted. Now——

A. Well, then certificates No. 411 to 416, inclusive, was the issuance of voting trust certificates

(Testimony of R. C. Canneddy.)

termed as original issue of voting trust certificates, but there again the tax computed at the two-cent rate is a tax on the transfer of depositor's rights to receive those voting trust certificates due to having them issued in the names of other persons.

Q. If voting trust certificates were taxable at original issue the tax would be either five—one or five cents, it would not be two cents? A. Yes.

Q. These were on the transfer of the right to receive the two-cent rate? A. Yes.

Q. Although it was the first time the original certificate was issued they were not issued to those who had the beneficial interest or who had deposited the stock with the trustee, is that true?

A. That is right. The department recognizes or contends for no tax on the issue of voting trust certificates.

Q. Now, with respect to the tax covered by the plaintiff's supplemental complaint, what was the basis of the \$1,400—the [191] first item of \$1,400 set forth in the plaintiff's claim for refund?

Mr. Phillips: The same objection, your Honor.

The Court: Same ruling.

Mr. Winter: Q. I have reference to those options, Mr. Canneddy.

A. Oh, yes, I recall. I was trying to find it here in the notes. The first item of \$1,400 is a tax at the rate of four cents per share on the issuance of the options by Portland Associates, Incorporated, to those three parties named.

(Testimony of R. C. Canneddy.)

Q. You made the original investigation of that tax liability, did you? A. Yes.

Q. And what date did you find as the date of the meeting of the board granting the options which have been introduced in evidence? Was it July 31st, 1932?

A. Yes, the date that we found and embodied in our report, or I will say that I found and incorporated in the report, was shown as the resolution in meeting July 31st, 1932.

Q. Since then have you made another investigation? A. Yes.

Q. And what date did you find the meeting was held which has been introduced in evidence?

A. Oh, this morning I re-examined the minute book here in evidence and find that there is no resolution in there or meeting of [192] July 31st, 1932, but that the meeting or adjourned meeting of January 27th, 1932, covers the items.

Q. Which if correct would carry a rate of two cents rather than the four cents?

A. Yes, apparently.

Q. Then if this date is correct, January 27th, 1932, it would carry a two-cent rate of \$700 liability instead of the \$1,400? A. That is right.

Q. Yes. Now, with respect to the second item?

A. The second item, as I recall it, is—

Mr. Phillips: The same objection, your Honor.

The Court: Same ruling.

Mr. Phillips: This is hearsay testimony.

(Testimony of R. C. Canneddy.)

A. (Continuing) Paul Stock was the owner and holder of voting trust certificates for 35,000 shares, which voting trust certificates he assigned and delivered to the Portland Associates, Incorporated, on or about—the exact date I don't know. I believe early in 1935, is the best I can say; that he assigned those voting trust certificates representing 35,000 shares of stock to Portland Associates, Incorporated, in consideration of that corporation delivering to him a certain oil-gas lease.

Mr. Winter: Q. Then I understand this is a tax of four cents per share on the transfer of voting trust certificates in the amount of—representing 35,000 shares of plaintiff corporation stock? [193]

A. Yes, the assignment by Paul Stock to the Portland Associates.

Mr. Winter: I think that is all, your Honor.

Cross Examination by Mr. Phillips:

Q. Well, Mr. Canneddy, in regard to an agreement in the first part of your testimony, you said there was some apparent agreement. Do you know of any agreement between the persons who received voting trust certificates and the corporation as such?

A. Only by deduction, I should say.

Q. That is the only thing that you base it on?

A. Yes, I think that is true.

Q. You know of no such agreement between the corporation itself and persons who received voting trust certificates?

A. No, I know of no written agreement.

(Testimony of R. C. Canneddy.)

Q. No. Now, you also stated in your testimony that the people who purchased these voting trust certificates actually purchased stock and agreed to deposit it under the terms of the voting trust agreement?

A. I didn't say that anybody purchased voting trust certificates.

Q. Well, all right. You said in your testimony then that the purchasers of stock bought the stock and agreed to deposit it under the voting trust agreement. Now, did you find any such agreement?

A. Only the voting trust agreement. [194]

Q. Only the voting trust agreement. Did you find where any certificates of stock had been issued by the corporation to the same persons who received voting trust certificates?

A. I would like to qualify that answer there just a little, that the only other agreement between the purchasers of stock and the corporation in addition to the voting trust agreement that I recall would be the subscription agreement involving the original 350,00 shares. It was there stated that the purchaser of the shares would purchase them pursuant to the voting trust agreement, or words to that effect.

Q. The original subscription?

A. Yes, for the original 350,000 shares.

Q. That is the subscription in the minute book?

A. Yes.

Q. If you are erroneous about those words that you have just used, why the Court should take the

(Testimony of R. C. Canneddy.)

minute book, of course? A. Yes, of course.

Q. Did you find any place where there had been any stock issued by the corporation, though, to these people who were listed as voting trust certificate owners in these schedules?

A. Well, of course going back to the first, the first stock certificate issued was for the 349,000 odd shares issued to C. R. Griffith not as a trustee.

Q. You say that was transferred to the corporation?

A. Yes—no, not transferred to the corporation. It was trans- [195] ferred to the trustees.

Q. That is what I thought. That is certificate No. 1, transferred to the voting trustees?

A. Yes.

Q. That is what actually happened to it, isn't it? A. Yes, that is as I recall it.

Q. And that is the tax that is listed as No. 2 on this item here. A. Yes, item No. 2.

Q. Yes. A. \$70.00.

Q. You never found any certificate issued to the corporation as such, did you?

A. You mean covering that donated stock?

Q. For the 249,000? A. No.

Q. There was no certificate, so far as you know, ever issued? A. No, not that I have seen.

Q. Now, on the 155,000 shares, item No. 5 that you referred to on your list, did you find any of that stock that was issued as capital stock by the corporation to the owners of the voting trust certi-

(Testimony of R. C. Canneddy.)

ificates shown in the voting trust certificate books?

A. The only stock certificates that I saw issued by the corporation representing those shares was that certificate No. 7 for 505,000 shares.

Q. 505,000 shares. That was issued to the voting trustees? [196] A. Yes.

Q. You never found any issued to any of these same individuals listed as voting trust certificate holders in the voting trust books?

A. No, outside of possibly those qualifying directors' shares.

Q. Qualifying directors' shares excepted. Now, your testimony so far in explaining your tax of \$3,100 there is based upon the assumption, is it not, that stockholders came in and subscribed for shares of stock and transferred their right to the voting trustees, isn't that what you are basing it on?

Mr. Winter: You mean actual subscriptions, Mr. Phillips, or implied subscriptions?

Mr. Phillips: Q. Well, you are assuming that they bought stock from the corporation first, aren't you?

A. My understanding is that the corporation sold or issued its shares to whoever paid for them.

Q. Well, did you find any such shares issued?

A. I will say I found no certificates issued, but shares.

Q. No certificates issued?

A. But shares were bought. The issuance of

(Testimony of R. C. Canneddy.)

shares is taxable even though no certificates may be issued.

Q. Well, who do you tax?

A. Well, the law imposes the tax liability equally on at least two parties.

Q. The purchaser and the seller? [197]

A. Yes, or the issuer.

Q. If there is something issued?

A. Yes. Well, the shares, if they are bought and paid for and the consideration accepted by the corporation in payment for those shares, would, for purpose of this tax, be held to be an issue of shares.

Q. But the issuer of certificates or shares of any kind is the only one who is taxable, is he not, as far as the issuance goes? A. No.

Q. And that is only when his records shows the issuances?

A. No, the issuer or the person to whom issued would be liable for the tax under the Revenue Laws.

Mr. Winter: Of course, that is a matter for the Court to determine, who is liable; it is a question of liability here. We just put in the basis—all I expected to show by this witness is the basis for the assessment, and I think it has been very well done. Of course, I have no objection to going on if he wants to.

The Witness: Well, Section 801 of the Revenue Act of 1926 will clearly show the Court that the tax liability is squarely on the shoulders of either party or both parties.

(Testimony of R. C. Canneddy.)

Mr. Phillips: Q. Yes. It is on the shoulders of a corporation if the corporation issues the stock?

A. Yes.

Q. Yes, and only for the stock that it issues?

[198]

A. Stock is a rather broad term; if I might suggest that we distinguish between shares and certificates, just to clear the points in here.

Q. Well, you say the corporation was not a party to the voting trust here?

A. As I understand, it is not.

Q. No. Now, as to your investigations down at the Title and Trust Company. You didn't make those on the 20th of June, did you, or the 21st, 1932?

A. No.

Q. Who did that?

A. As I recall, it was Deputy Collectors Gingrich and Courtright.

Q. Mr. Oscar Gingrich, is that his name?

A. Yes.

Q. You were not present?

A. I am not certain as to the other deputy being Courtright, but I believe it was.

Q. It was Mr. Courtright, wasn't it?

A. I think so.

Q. Where is Mr. Gingrich these days, do you know?

A. He passed away some year ago or more.

Q. Oh, did he? And Mr. Courtright, where is he?

A. I don't know about Mr. Courtright.

(Testimony of R. C. Cannecddy.)

Mr. Winter: He has been out of the service for some time. A. Yes. [199]

Mr. Phillips: Q. The information that you have was received after the claim for refund, is that correct?

A. Yes. I came into the matter as a result of the claim for refund having been filed.

Q. Do you have the report that Mr. Gingrich made in this matter?

A. I was going to say that that is in evidence here, is it not, Mr.—

Mr. Winter: We have what purports to be a copy of it. The Commissioner didn't send it in. I don't know whether it is a copy or not, I couldn't swear that it is a copy because I don't know Mr. What's-his-name's signature.

Mr. Phillips: Gingrich's report was not among that that you put in, as I recall it.

Mr. Winter: Of course, his report would be an inter-office report to the Collector. No, it has not been introduced in evidence. I have a part of the Collector's files which he says is a part of the file. Now, I assume that it was the Deputy Collector's report, but we do have in evidence the Commissioner's determination and notice of adjustment where he goes in and shows the basis of each one, and that is in evidence, showing just exactly what the Commissioner bases his assessment on.

Mr. Phillips: Q. Let me ask another question. The Commissioner in making his assessment, you

(Testimony of R. C. Canneddy.)

are familiar with the Commissioner's procedure in making the assessment? A. Well— [200]

Q. He bases that assessment upon his reports that come from the field men, doesn't he?

A. Not entirely. He takes the information that the field man sends in and will frequently see the necessity of calling for additional information in determining the tax liability.

Q. But in this case you were not called in until after the claim for refund?

A. That is right.

Q. Was filed. So that in the original instance and before the assessment was made by the Commissioner, he only had the field agent's report, isn't that true?

A. I don't know about that for sure. I wouldn't know.

Q. You wouldn't know? A. No.

Q. Well, do you know of anything else that he would have besides the field agent's report?

A. Well, I might theorize as to things that may have developed, but I don't know. The Commissioner's office will in some cases correspond with the taxpayer and request additional information. In some cases it is referred to the Collector's office and some other deputy will be sent out to make a reinvestigation and submit additional data, but whether any of that was done I am not in a position to say.

(Testimony of R. C. Canneddy.)

Mr. Phillips: Do you have the report of the field agent available? [201]

Mr. Winter: No. I say I have a copy of the Collector's file, which is here, but——

Mr. Phillips: Does that contain Gingrich's report?

Mr. Winter: Well, it contains what purports to be a copy of Mr. Gingrich's report, yes.

Mr. Phillips: Well, if the Court please, we will file at this time our notice to produce, which was served about a week ago, and this item was listed among that, and we would request the right to put in a copy in lieu of the original which is in Washington, apparently.

Mr. Winter: If you've got a copy, produce it.

Mr. Phillips: May I have your copy?

Mr. Winter: I don't know that it is a copy.

Mr. Phillips: Well, may we see it?

The Court: Is this a copy here you have just given the bailiff?

Mr. Phillips: No, that is my original notice which was served. I will file that.

The Witness: I think this is what you refer to, Mr. Winter. It is tied in to this file with a lot of other papers, communications, inter-office communications, some of them. We might take this file apart and take out that one, I suppose.

Mr. Winter: It isn't my file, but if the Court wants it I will certainly——

The Court: All right, put it in. [202]

(Testimony of R. C. Canneddy.)

Mr. Winter: I will say this, that the Court will assume the responsibility. Now, whether that is his final report or not I don't know, I just got that much of the file and I sent to Washington for all the files they had in Washington, and I brought all the certified copies, and counsel's demand was so indefinite, he didn't say what he wanted, so I got everything I could and then he objected to introducing them after I got them here.

The Court: Well, are you going to examine him on that, Mr. Phillips?

Mr. Phillips: Well, I never examined it thoroughly, except I know what is in it pretty well from conversations with Mr. Gingrich.

The Court: Are you going to examine this witness on it, I mean.

Mr. Phillips: Well, we will just put that in evidence.

Mr. Winter: Certainly we are going to object to its introduction because Mr. Gingrich is now dead and this is an inter-office communication. I think that the Commissioner's assessment showing his basis is what counsel—now, it does not appear that this has ever been communicated in substance to the Commissioner, and I have no objection if the Court wants it, I certainly——

Mr. Phillips: I will offer it in evidence.

Mr. Winter: Well, we will object to the introduction of it [203] for the purpose of the record; under the authorities the reports of the agents is

(Testimony of R. C. Canneddy.)

not evidence, particularly when it appears that the Commissioner—if he has made it on a different basis. Now, I know what counsel is going to refer to in there. The agent made in this report, made a reference to what he called a tax on an original issue, but it is explained by the Commissioner in his report and shows the basis, and we will object to it as it is not the best evidence, it appears to be a document written by a man dead and which no right of cross examination exists, and it does not appear to have been made by the Commissioner or to have been used by him in the assessment which is admitted in evidence.

The Court: Admitted subject to the objection.

Mr. Winter: Note an exception.

The Court: Allowed.

(The report of Investigating Officers Gingrich and Courtright so offered and received, was marked received as PLAIN-TIFF'S EXHIBIT No. 20.)

The Witness: Mr. Phillips, I find here a copy of the later one of that \$209.00 item that isn't included in that. Do you want a copy of that also?

Mr. Phillips: Q. No, I don't think so. That is a very small item. But on that particular item of \$205.00, I might ask you about that. You testified about certificate No. 409 for instance, upon which a tax of \$209.00 was assessed. [204]

A. Yes. I said I was not able to say other than just that he computed the tax at a four-cent rate,

(Testimony of R. C. Canneddy.)

that it must have been in his report as a transfer.

Q. If there was no transfer as shown by the certificate book, why there wouldn't be any tax due, would there?

A. You mean by the voting trust certificate book?

Q. The voting trust certificate book.

A. Well, the same amount of tax would be due if it was one of them that he dubbed "Original issue."

Q. Well, I mean if that was issued just to correct an error in the certificate issued to the same person no tax is due on it, is there?

A. If I understand you right, if certificate No. 409 was issued in the name of a person in lieu of the certificate representing that number of shares previously issued in the same name merely to correct an error, that would involve no tax, that is right.

Q. Now, these others you testified to, like 411 to 416, inclusive, issued to C. H. Griffith listed on the list as original issue, now you say that tax represents the depositing of that with the voting trustee?

A. No, that is one of those things for you and I to use the same words and get the same understanding, but certificates No. 411 to 416, identified in this schedule of yours, Mr. Phillips, as original issue, means an original issue of voting trust certificates. [205]

(Testimony of R. C. Canneddy.)

Q. Yes, that is as distinguished from a transfer?

A. No. It would distinguish it to this extent, that it does not represent other voting trust certificates which have been surrendered for cancellation.

Q. Yes. Well now, what did you say the transfer is there that you tax?

A. It is a transfer of the depositor's right to receive these voting trust certificates.

Q. The depositor's right to receive the voting trust certificates, all right. Now, isn't that included in the original tax on the 155,000?

A. No. If I may draw an illustration of the transaction, possibly—I have tried to do this before, but you will possibly see it. It is that if I have subscribed or purchased from the corporation a hundred shares of stock and pursuant to the voting trust agreement allow a certificate representing those shares to be issued to the voting trustees, two taxes have been incurred. First would be what we call the original issue tax pursuant to my subscription for those shares. The second would be a transfer tax based on the transfer of my right to receive the shares due to the issuance of a certificate in the trustee's name. Now, my being the depositor of those shares in the voting trust, I become entitled to receive voting trust certificates representing those shares, according to the terms of the voting trust agreement. So then the third tax [206] arises by virtue of my directing that voting trust certificates

(Testimony of R. C. Canneddy.)

representing that hundred shares be issued to Smith. There I have transferred my right to receive the voting trust certificates.

Q. All right. Well, in this case did you find any evidence in the books of the voting trust certificate books or in the stock books of the corporation that any such certificate had been issued to C. H. Griffith by the corporation in the first place, a certificate for a share of stock issued by Portland Associates?

A. Well, I don't recall of a certificate of stock being issued to C. H. Griffith unless it would be one of those qualifying director's shares.

Q. Well, nothing representing the amount set forth in this item 410 to 416, is there?

A. No.

Q. No. A. These refer not to—

Q. And did you find any evidence any place in the record where C. H. Griffith had deposited any certificates with the voting trustees to represent these same shares even?

A. No, we did not. That is what raised the question of this what you might term the third tax. C. H. Griffith receives voting trust certificates representing shares that he apparently did not subscribe for.

Q. Your tax then is based on the **assumption** that he was subscri- [207] ing for that many shares and having them issued in his name and then depositing them in the trust?

(Testimony of R. C. Canneddy.)

Mr. Winter: Now, just a minute. Your Honor, I submit the witness didn't say that. That is trying to becloud the issue here.

The Court: Well, he can make his own answer, Mr. Winter.

A. This tax is based on the apparent——

Mr. Phillips: Q. Just answer my question, please. Isn't it based on that assumption, that that is——

Mr. Winter: I submit the witness can answer it the best way he knows how.

The Witness: Will you have the reporter read the question again?

(The reporter thereupon read the question.)

A. No, that isn't the way, Mr. Phillips. It is apparently a case of Mr. Griffith not being a depositor of shares in the trust.

Mr. Phillips: Q. Well, let's take another one. C. H. Griffith, of course, was one of the original subscribers. Let's take some of these other original issues here as an example. Down at the bottom of page 1 we find L. L. Underdahl, certificates 48 and 49 for 3,000 shares, voting trust certificates. Now, in that particular instance your tax is based on the assumption, is it not, that Mr. Underdahl subscribed for shares of stock in the corporation—had shares of stock issued to [208] him and he turned those shares of stock in to the voting trustees to be held under the voting trust, isn't that right?

(Testimony of R. C. Canneddy.)

A. No, that isn't the way it is set up, Mr. Phillips. It is just the opposite of that, that those people to whom the voting certificates were issued were not the depositors of the shares of stock in the trust.

Q. They were not depositors?

A. Exactly.

Q. That is, that they made no transfer to the voting trustee?

A. That is right. This tax, as in these instances of voting trust certificates 411 to 416, is on the transfer of the depositor's right to receive those shares.

Q. The depositor's right to receive?

A. Yes, that is the right to receive the voting trust certificates for the share. We might just as——

Q. I guess that is a matter of law anyway. Now, on the minutes relative to the options which you referred to, you examined those yourself?

A. Yes.

Q. And you mentioned the difference in the date. Now, would you say that the minutes have been changed or anything of that kind, the date of that meeting, since that time?

A. No, I see no evidence or indication of that.

Q. Don't you think that your date at that time was confused with the expiring date of the option, July 31st? [209]

A. Well, it is hard to admit such a thing, but in the face of it here it must be the case.

(Testimony of R. C. Canneddy.)

Mr. Winter: That is what we intend to concede. That is the reason I got that of my own volition. I asked that question. I didn't want any inferences, that is the reason I put it in there, to show that we made an error.

Mr. Phillips: Q. Now, as to the transfer of Mr. Stock that you referred to. Did you find any evidence of a transfer of Mr. Stock to the corporation?

A. As I remember it, the stock certificates were endorsed by Mr. Stock and delivered to the corporation—I mean the voting trust certificates.

Q. The voting trust certificates? A. Yes.

Q. You don't know who they were delivered to?

A. Well, no. As I remember it, we haven't talked about that since, I mean you and I haven't discussed that. It is two years or more ago, but as I recall it the voting trust certificates were in the possession of Portland Associates, Incorporated. It was contended by officers of the corporation that they were so accepted, but contended that no tax attached because the corporation considered them to be canceled upon the return by Mr. Stock.

Q. Well, you were told at that time that they were submitted for cancellation, weren't you? [210]

A. Well, I may have been. I just don't remember. I probably was. I may have mentioned that in my report. Let me see if I did (searching papers). I don't see that thing here now.

(Testimony of R. C. Canneddy.)

Q. Well, we will pass that, then. You didn't find any evidence that any money had been paid on these options?

A. No.

Q. Or that they had ever been accepted by the parties named in those resolutions?

A. I wouldn't be able to say and wouldn't be concerned with whether they were accepted by them. As I understand it, those persons initiated the matter that developed in the options being issued by the corporation. They made a proposition to the corporation, offering to assume certain liabilities in one case.

Q. But they never exercised the option?

A. Well, I wouldn't know whether they did. They didn't to my knowledge, but that would be immaterial.

Q. They didn't, so far as you know. Well, if they had exercised the option and had certificates issued to them the tax would be on the certificate, wouldn't it?

A. No, the tax would be on the option. If an option is a bona fide option the tax is payable at the time the option is executed, and it is immaterial whether it is ever exercised. If it is eventually exercised and the share is purchased, no additional tax would be payable.

Q. Well, in this case if it had been exercised and the certifi- [211] cates issued, why the tax would be on them because you have taxed every certificate three times already, haven't you?

(Testimony of R. C. Canneddy.)

A. No, this would involve another transaction. One person owning shares of stock may execute any number of options covering those shares of stock and none of the options ever be exercised, the tax would be payable on each option so executed.

Q. But so far as you know they were never exercised in this case? A. No.

Q. No money paid, so far as you know?

A. No.

Q. No certificates received, so far as you know?

A. You mean no certificates—

Q. You never found anything except what is in the minute book there in regard to those options?

A. No, I believe not.

Mr. Phillips: I think that is all.

Redirect Examination by Mr. Winter:

Q. Just one question, Mr. Canneddy. How long have you been in the Internal Revenue service as the agent specializing in tax matters?

A. Since August 16th, 1928.

Q. Has it often occurred in your work, I mean have you often seen certificates issued other than the subscribers? A. It is very common. [212]

Q. Very common, or issued to nominees?

Mr. Phillips: We will object to this line of questioning, your Honor, as to what they have done in other cases. It is not binding upon the Court.

Mr. Winter: The only thing I have in mind—

The Court: How many more questions have you?

(Testimony of R. C. Canneddy.)

Mr. Winter: Just about one more.

The Court: Not more than two.

Mr. Winter: All I wanted to say was that counsel seems to——

The Court: Go ahead, ask your question.

Mr. Winter: Q. Did you answer the question?

A. No, I didn't.

Mr. Winter: (To the reporter) Would you read the question?

(The reporter thereupon read the question.)

A. Oh, I answered that it is very common to issue stock certificates to other persons than the subscriber to the share.

Mr. Winter: Q. As is contended was done in this case? A. Yes.

Mr. Winter: That is all.

Mr. Phillips: That is all.

(Witness excused.)

Mr. Winter: We have no further evidence, your Honor, but before resting we would like to—before presenting the case we would like to file a motion for judgment. [213]

The Court: Reserve decision.

Mr. Winter: And requested findings of fact and conclusions of law.

The Court: Reserve decision.

Mr. Winter: Your Honor will note that in the findings, I just want to call your Honor's atten-

tion to this, in finding No. 18 we have asked the Court to find that the meeting of the board of January 28th, 1938, admitting our—I left that open, and it is written in in ink because it was stated at the four-cent tax instead of the two-cent rate.

Mr. Phillips: If the Court please, there are a couple of minor amendments that we would suggest in the complaint as to amounts on page 3, which—

The Court: Just dictate them to the reporter.

Mr. Phillips: On page 7 of the complaint we would request that it be amended to conform to the proof, that the amount in line 20 of \$7,783.19 to be changed to \$8,124 51.

Mr. Winter: Where is that?

The Court: He can tell you afterwards. Allowed.

Mr. Phillips: And that the words together with the sum of \$64.00 be stricken.

The Court: Allowed.

Mr. Phillips: And that in Paragraph No. 8, line 29, on page 3 of the complaint, that the figures \$2,950.00 be changed to \$2,950.90. [214]

The Court: Allowed.

Mr. Phillips: They are typographical errors, I think, and our findings of fact, we had anticipated we would submit them after the Court's decision.

The Court: Well, I don't know the practice, that is for you to say. Of course, you are trying your own case, your opponent has just suggested—have you got them prepared?

Mr. Phillips: No, I haven't.

Mr. Winter: Judge, if he refused to make special findings requested after the case had been settled, and——

The Court: Now, you have talked all morning, let me talk now. I suggest that you hold the case *upon* as to your rebuttal, and before you show it closed on the record submit your findings of fact. Do you have any objection to that?

Mr. Winter: I have no objection to giving counsel that leave.

Mr. Phillips: Under our practice I understand the Court has to make findings without a jury anyway on all the issues.

The Court: Well, now, you do it any way you want to. Do you want to keep your record open or show it closed now?

Mr. Griffith: No. They have stipulated on something.

Mr. Phillips: What about time on briefs, your Honor.

The Court: You take your own time on that.

Mr. Winter: How long do you want?

Mr. Phillips: I can have my brief within two weeks or ten days. [215]

Mr. Winter: May we have thirty days after counsel submits his brief?

The Court: Yes. Court adjourned. [216]

United States of America,
State of Oregon,
County of Multnomah.—ss.

I, George F. Cropp, hereby certify that I am a qualified and experienced stenotype reporter; that I reported in stenotypy the proceedings had and the testimony given in the foregoing entitled cause on Thursday, March 31, 1938; that I subsequently reduced my stenotype notes to typewriting, and that the foregoing and hereto attached 95 pages of typewritten matter, numbered from 1 to 95, inclusive, contains a full, true and accurate record of said proceedings and testimony so taken by me in stenotypy as aforesaid, and of the whole thereof.

Dated at Portland, Oregon, this 2nd day of July, 1938.

(Signed) GEORGE F. CROPP.

[Endorsed]: Filed Apr. 26, 1939. [217]

[Title of District Court and Cause.]

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that J. W. Maloney, Collector of Internal Revenue, Portland, Oregon, the defendant above-named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit

from the Final Judgment entered in this action on the 7th day of January, 1939.

CARL C. DONAUGH

United States Attorney for
the District of Oregon

M. B. STRAYER

Assistant United States
Attorney

Attorneys for Appellant
506 Federal Court House,
Portland, Oregon

Filed April 6, 1939

G. H. Marsh, Clerk

By F. L. Buck, Chief Deputy. [109]

[Title of District Court and Cause.]

STATEMENT OF POINTS

Defendant, J. W. Maloney, having heretofore filed with the above-entitled court his notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, states that on appeal he intends to rely upon the following points:

(1) Findings of Fact Nos. 16, 18, 20, 21, 22, 23, 24, 26, 27, 28, 29, and 30, made and filed by the above-entitled court, and each thereof, are erroneous and are not supported by and are contrary to the evidence produced at the trial of the above-entitled cause;

(2) The Court erred in failing to enter the Findings of Fact requested by the defendant;

(3) Conclusions of Law Nos. 1, 3, 4, 5, 6, 7 and 9, made and filed by the above-entitled Court, and each of them, are erroneous and not supported by and are contrary to the evidence and Findings of Fact made and filed by the above-entitled Court;

(4) The Court erred in refusing to find and enter the Conclusions of Law requested by defendant;

(5) The Court erred in finding that any of the taxes involved herein were unlawfully or erroneously assessed and collected and erred in refusing to grant defendant's motion for judgment.

CARL C. DONAUGH

United States Attorney for
the District of Oregon

J. MASON DILLARD

Assistant United States
Attorney

Filed April 20, 1939

G. H. Marsh, Clerk

By F. L. Buck, Chief Deputy. [111]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To the Clerk of the above-entitled Court:

Defendant, J. W. Maloney, hereby designates as the portions of the record, proceedings and evidence

to be contained in the record on appeal the following:

1. Complaint
2. Supplemental Complaint
3. Answer to Complaint
4. Reply to Answer
5. Answer to Supplemental Complaint
6. Reply to Answer to Supplemental Complaint
7. Stipulation for Trial without Jury
8. Defendant's Motion for Judgment
9. Defendant's Request for Findings of Fact and Conclusions of Law
10. Memorandum Opinion Filed Nov. 29, 1938
11. Supplemental Opinion Filed Dec. 20, 1938
12. Findings of Fact and Conclusions of Law
13. Judgment
14. Certificate of Probable Cause [113]
15. Transcript of Evidence and Proceedings at Trial
16. Notice of Appeal
17. Statement of Points
18. This designation.

CARL C. DONAUGH

United States Attorney

for the District of Oregon

J. MASON DILLARD

Assistant United States

Attorney

United States of America,
District of Oregon.—ss.

Service of the within DESIGNATION OF CONTENTS OF RECORD ON APPEAL is accepted in the State and District of Oregon this 19th day of April, 1939, by receiving a copy thereof, duly certified to as such by J. Mason Dillard, Assistant United States Attorney for the District of Oregon.

CLARENCE D. PHILLIPS

Of Attorneys for Plaintiff

Filed April 20, 1939

G. H. Marsh, Clerk

By F. L. Buck, Chief Deputy. [114]

[Title of District Court and Cause.]

DESIGNATION OF ADDITIONAL PORTIONS
OF RECORD ON APPEAL

To the Clerk of the above entitled Court:

The above plaintiff, Portland Associates, Inc., a corporation, hereby designates the following portions of the record proceedings and evidence in addition to the portions of the record proceeding in evidence heretofore designated by the above defendant to be contained in the record of appeal.

1. Plaintiff's motion for judgment.
2. Plaintiff's proposed findings of fact and conclusions of law.
3. All of the exhibits admitted in evidence in the above cause.

4. This designation.

 GRIFFITH, PECK & COKE
By CLARENCE D. PHILLIPS
 Attorneys for plaintiff.

State of Oregon

County of Multnomah.—ss.

Due, timely and legal service by copy admitted
at Portland, Oregon this 21st day of April, 1939.

 J. MASON DILLARD
 of Attorneys for Defendant.

Filed April 24, 1939

G. H. Marsh, Clerk. [116]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR
DOCKETING APPEAL

THIS MATTER coming on to be heard on motion of defendant, by Carl C. Donough, United States Attorney for the District of Oregon, and M. B. Strayer, Assistant United States Attorney, for an order extending the time for docketing the appeal in the above-entitled cause in the Circuit Court of Appeals for the Ninth Circuit to and including the 17th day of June, 1939, and the Court being fully advised in the premises, IT IS CONSIDERED, ORDERED and DIRECTED that the time for docketing the appeal in the above-entitled

cause be, and it is hereby, extended to and including the 17th day of June, 1939.

Dated at Portland, Oregon, this 13th day of May, 1939.

CLAUDE McCOLLOCH,

District Judge

[Endorsed]: No. 7197 United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 3, 1939. Paul P. O'Brien, Clerk.

United States of America
District of Oregon.—ss.

I, G. H. MARSH, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 118 inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein No. L-12934, in which J. W. Maloney, Collector of Internal Revenue, Portland, Oregon, is defendant and appellant, and Portland Associates, Inc., is plaintiff and appellee; that the said transcript has been prepared in accordance with the designation of contents of the record on appeal filed by the appellant and by the appellee and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that the foregoing transcript is a full, true and correct transcript of the record and proceedings had in said court in said

cause, in accordance with the said designations as the same appear of record and on file at my office and in my custody.

I further certify that the cost of comparing and certifying the within transcript is \$41.25 and that the same has been charged against the United States.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 26th day of May, 1939.

[Seal]

G. H. MARSH,

Clerk. [219]

[Endorsed]: No. 9197. United States Circuit Court of Appeals for the Ninth Circuit. J. W. Maloney, Collector of Internal Revenue, Portland, Oregon, Appellant, vs. Portland Associates, Inc., a Corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed June 3, 1939.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

9197

J. W. MALONEY, Collector of Internal Revenue,
Portland, Oregon,

Appellant,

v.

PORTLAND ASSOCIATES, INC. a Corporation,
Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD TO BE PRINTED

COMES NOW the appellant, J. W. Maloney, and in compliance with Rule 19 of the United States Circuit Court of Appeals for the Ninth Circuit, states that upon the appeal he intends to rely upon the following points:

(1) That the Findings of Fact Nos. 16, 18, 20, 21, 22, 23, 24, 26, 27, 28, 29 and 30, made and filed by the District Court of the United States for the District of Oregon, and each thereof, are erroneous and that they are not supported by and are contrary to the evidence produced at the trial of the above-entitled cause; that said Findings of Fact are set forth upon Pages 87-100, inclusive, of the original certified record herein.

(2) That the District Court erred in failing to enter the Findings of Fact requested by the appellant, said requested Findings of Fact being set forth upon Pages 71-77, inclusive, of the original certified record herein.

(3) That the Conclusions of Law Nos. 1, 3, 4, 5, 6, 7 and 9, made and filed by the District Court, and each thereof, are erroneous and are not supported by and are contrary to the evidence and Findings of Fact made and filed by the District Court; that said Conclusions of Law are set forth upon Pages 100-102, inclusive, of the original certified record herein.

(4) That the District Court erred in refusing to find and enter the Conclusions of Law requested by the appellant, and that said Conclusions of Law are set forth upon Pages 77 and 78 of the original certified record herein.

(5) That the District Court erred in finding that any of the taxes involved herein were unlawfully or erroneously assessed and collected, and erred in refusing to grant the appellant's motion for judgment; that said motion for judgment is set forth upon Pages 51 and 52 of the original certified record herein.

Appellant further designates the following parts of the record which he believes are necessary for the consideration of the foregoing points:

| | Page |
|--|--------------|
| 1. Complaint | 1-21, incl. |
| 2. Supplemental Complaint | 23-29, incl. |
| 3. Answer to Complaint | 31-34 “ |
| 4. Reply to Answer | 36-37 |
| 5. Answer to Supplemental Com- plaint | 39-42 “ |
| 6. Reply to Answer to Supplemental Complaint | 44-45 |
| 7. Stipulation for Trial without Jury | 47 |
| 8. Defendant's Motion for Judg- ment | 51-52 |
| 9. Defendant's Requested Findings of Fact and Conclusions of Law | 71-78 “ |
| 10. Memorandum Opinion filed Nov. 29, 1938 | 80-83 “ |
| 11. Supplemental Opinion filed Dec. 20, 1938 | 85 |
| 12. Findings of Fact and Conclusions of Law | 87-102 “ |
| 13. Judgment | 104-105 |
| 14. Certificate of Probable Cause | 107 |
| 15. Transcript of Evidence and Proceedings at the Trial | 120-218 “ |
| 16. All Exhibits Introduced at the Trial | _____ |
| 17. Notice of Appeal | 109 |
| 18. Statement of Points | 11 |

19. Designation of Record 113-114
20. Plaintiff's Designation of Addi-
tional Portions of Record on
Appeal 116
21. This Statement and Designation ———

Dated, this 31st day of May, 1939

CARL C. DONAUGH

United States Attorney for
the District of Oregon

M. B. STRAYER

Assistant United States
Attorney

United States of America,
District of Oregon.—ss.

Due and legal service of the within STATE-
MENT OF POINTS AND DESIGNATION OF
RECORD TO BE PRINTED is hereby admitted
and accepted within the State and District of Ore-
gon, on the 31st day of May, 1939, by receiving a
copy thereof duly certified to as a true and correct
copy of the original by M. B. Strayer, Assistant
United States Attorney for the District of Oregon.

CLARENCE D. PHILLIPS
Of Attorneys for Appellee

[Endorsed]: Filed Jun. 7, 1939. Paul P. O'Brien,
Clerk.

